MAGENS, NICOLAS.

An Essay on Insurances, explaining the Nature of the various Kinds of Insurance practised by the different Commercial States of Europe, and shewing their Consistency of Inconsistency with Equity and the Public Good ... London, Printed by J. Haberkorn and sold by W. Baker, 1755.

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First published in German in Hamburg, 1753, this edition is revised and enlarged. "A valuable work by a very able man." - Higgs.

This work, chiefly on marine insurance, was written by a German merchant in London, who was referred to by Adam Smith as "Mr. Meggens". "He was one of those naturalised in 1737 by Private Act, 10 Geo. II, c.3." - Higgs, p.52.

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Higgs, Bibliography of Economics 1751-75, No.478 (German 1st ed.).
Clyde L. Grose, A Select Bibliography of British History. No.925.

Thomas Aston.
1776 Lond.

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AN ESSAY
ON
INSURANCES,

EXPLAINING

The Nature of the various Kinds of Insurance practised by the different Commercial States of EUROPE, and shewing their Consistency or Inconsistency with Equity and the Public Good.

ILLUSTRATED BY

Real and *extraordinary Cases*, stated at large, with OBSERVATIONS thereon, tending to settle divers doubtful Points in making up Accounts of *Losses* and *Averages*.

To which are annexed,

Some brief *Hints* to Merchants and Insurers concerning the Risks to which Navigation is exposed in Time of War; the King of PRUSSIA's *Exposition* in relation to the Capture and Detention of the Ships of his Subjects by the ENGLISH during the late War; the *Answer* from ENGLAND to it; some *remarkable Pieces* concerning the Stopping of Ships in former Wars;

AND

A famous *Insurance Cause* pleaded before the House of LORDS, and some Mercantile Observations thereon.

By *NICOLAS MAGENS*, Merchant.

VOLUME I.

LONDON,

Printed by J. HABERKORN: And sold by W. BAKER, Stationer, near the Post-Office, *Lombard-Street*.

M DCC LV.

TO

THE RIGHT HONOURABLE

PHILIP Earl HARDWICKE,

Lord High Chancellor of Great Britain.

MY LORD,

THE *great and apparent Advantages arising to Trade from well regulated Insurances upon Ships and Merchandize, and the Want of any Treatise in the* English *Language in which they are fully and clearly explained, induced me to think that it would be of some Service to the Commercial Part of this Nation to publish several Rules and Regulations in relation to Insurance, collected from the Ordinances of the principal Trading Cities of Europe, together with such Thoughts as have occurred to me during many Years Experience.*

I have

DEDICATION.

I have endeavoured to ſet in a clear Light ſome intricate Points, which, not rightly underſtood, have given Occaſion to Diſputes; and to demonſtrate the bad Tendency and pernicious Conſequences of many Cuſtoms which at preſent prevail in making and ſettling Inſurances. If what I have done conduce to encourage the fair Merchant, and to prevent fraudulent Practices for the future, I ſhall be ſufficiently rewarded.

I preſume to dedicate theſe Papers to Your Lordship, *as preſiding in that Court where many intricate Caſes of Inſurances have been decided, and numerous fraudulent ones detected.*

I rely on Your Lordship's *Goodneſs to excuſe any Inaccuracies of Expreſſion and Miſconceptions of judicial or legal Proceedings in a Merchant who is not perfect in the* Engliſh *Tongue, or ſkilled in its Laws and Conſtitutions, for which he has the higheſt Veneration, as they are the great Security of our Liberties and Properties, and the Envy and Admiration of other Nations.*

I am, with the greateſt Reſpect,

MY LORD,

Your Lordship's

moſt devoted,

moſt obedient Servant,

January 1755.

NICOLAS MAGENS.

TO THE

READER.

THE firſt Eſſay of this Work, as the following Preface ſhews, made its Appearance in the *German* Language at *Hamburgh*; and as ſome Bookſellers here, perhaps from the Conſideration that it had been printed there at the public Expence, were ſolicitous to get it tranſlated, I determined to take that upon myſelf, as well to prevent a too haſty Publication, as for the Sake of making ſome Amendments and Additions to it, ſo that it may now in effect be called a ſecond Eſſay.

THIS *Engliſh* Edition exceeds the *German* in containing (1) ſeveral more Remarks and Caſes, (2) the late *Pruſſian* Complaints againſt the *Engliſh* Captures during the laſt War, and *England*'s Anſwer, together with ſome other remarkable Pieces concerning the Stopping of Ships, and ſome mercantile Reflections thereon; (3) an additional Ordinance publiſhed at *Bilbao* An. 1738. and ſome Notes on each Ordinance in particular; (4) ſeveral more *Engliſh* Acts of Parliament relating to Shipwrecks; and the Charters, and Conſtitution of the Inſurance Companies in *London*. (5) A Summary of all ſuch Treaties of Commerce between *England* and Foreign Powers as are now in Force; being influenced chiefly to make this laſt Addition by finding in the Collections of this Kind publiſhed in *England*, many Treaties omitted, which have been concluded in our Days, and others inſerted that are now out of Date. What I could not meet with elſewhere I applied for to thoſe in Authority,

and had the Satisfaction to be furniſhed with ſuch as I aſked for. I received the additional Pleaſure, on this Occaſion, of being encouraged to proceed in this Work, for the Service of the Public, by more than one eminent Judge, who had the Peruſal of it before it was finiſhed. Wherefore I may now venture to ſay that it contains ſomething worthy of the Conſideration of different Sorts of Perſons who hold diſtinguiſhed Ranks in the State. It will on ſeveral Occaſions be of Service to Perſons who are employed in Negotiations abroad, or ſit in Parliament at home, to find theſe Things collected together, with the plain and unbiaſſed Thoughts of a Merchant thereon annexed: And as to the Perſons concerned in Commerce, I judge it to be as neceſſary for Merchants who trade, and Captains who navigate, to Foreign Countries, to be furniſhed with their Ordinances and their Treaties of Commerce with *England*, as to have a Compaſs on board.

And as my View now more particularly tendeth to the Service of *England*, I have endeavoured to explain myſelf in ſome Places more amply on what regards our Laws and Cuſtoms here: and although I have not the Vanity to expect that my Thoughts of what ought, or ought not, to be Law will make any great Impreſſion upon thoſe whoſe Province it is to frame and conſtitute the Laws, until they are thoroughly convinced of the Reaſonableneſs and Neceſſity thereof, I flatter myſelf, however, that ſuch of thoſe learned Gentlemen as will take Time to peruſe what I have written, will find nothing in it repugnant to Equity and ſound Reaſon: and that particularly, on reading Sect. 9 and 10, they perhaps will be convinced, that *all* Cuſtoms of Merchants are not founded on right Principles;

and,

and, though become reſpectable by Antiquity, that they ſhould not avail in any Suit of Law, ſo as to outweigh the Scale of right Reaſon.

The Reader will find that in Sect. 66. I attempt to introduce a quite different Rule from any that has been laid down by other Authors, in what Manner Damages ought to be borne in Caſes where two Ships run foul of one another; and that in Sect. 70. and 80. I ſeem diſſatisfied with thoſe Parts of two Acts of Parliament now in Force, which ſet forth in what Manner a Perſon inſured is to be regarded as a Creditor in Caſe of an Inſurer's Failure: and how, or when, Reaſſurances may be lawfully made, and the contrary. He will likewiſe find that I differ in many other Points from what has hitherto been the commonly received Opinion and cuſtomary Practice. I muſt not therefore expect to eſcape Cenſure and Criticiſm: Yet as I am confident that none of the Poſitions advanced by me are deſtitute of Reaſon, I ſhall the more readily ſubmit the Whole to the Candour of ſuch whoſe Experience may have qualified them to judge thereof. And indeed if I had not found my Sentiments differ from thoſe who have handled this Subject, I ſhould not have been at the Pains to have written at all.

It muſt be allowed that the Buſineſs of Inſurance is carried to a much greater Extent in *London*, than in any other City in *Europe:* Inſurances daily are made here on Adventures by foreign Ships, as well as others whoſe Riſks are wholly determinable in foreign Dominions. It muſt, therefore, doubtleſs be of Service to the Public to be furniſhed with a Tranſlation of all the foreign Ordinances made in relation to Inſurances: becauſe in caſe of any Diſpute

Diſpute or Law-Suit ariſing from an Inſurance made on Riſks in foreign Ships, or determinable in foreign Parts, it will be requiſite to be acquainted with the Ordinances of thoſe Countries, in order to frame any ſolid Judgment whether the Parties concerned have acted right or wrong: of theſe, however, in all the Books I have ſearched into here, I have only met with one Tranſlation, and that a bad one, of the *French* Ordinance *Anno* 1681, and another of the old *Amſterdam* Ordinance publiſhed in the Beginning of the laſt Century; but with none of the more complete ones of latter Years made in ſeveral Parts of *Europe*; and which are all inſerted in the preſent Collection, together with ſome few Notes on each of them.

SHOULD the Legiſlature at any Time hereafter be induced to make a complete Body of Laws with reſpect to Inſurances, which is ſo greatly wanted here; the Tranſlations of all theſe foreign Ordinances muſt be of Service, as they preſent an Opening for many wiſe and neceſſary Conſiderations. And whenever that ſhall happen, I would particularly recommend *one*, not to be omitted, and that is N°. 1192. in the *Stockholm* Ordinance, which decrees, " that any one inſulting his Ad-
" verſary before the Court of Inſurance, either by Word of
" Mouth or Writing, by Mocking or Railing, by defamato-
" ry Accuſations or Geſtures, he ſhall incur the Penalty of
" *Thirty Rixdollars*, and even a higher. "

THE Reaſons for inſerting a Clauſe of this Nature, are too obvious to need explaining to People who live in *England*, and recollect in what Manner they have been ſometimes treated in the Courſe of Trials in our Courts.

PREFACE

TO THE

FIRST ESSAY

ON

INSURANCES,

Publiſhed at *HAMBURGH*, in 1753.

THE true ſcope and intention of all well-calculated commercial laws is, to unite the intereſt of every individual in ſuch a manner, as that the whole community may be induced to act for the general good. If this principle be adhered to, and a due execution of thoſe laws, and an impartial adminiſtration of juſtice, follow; the merchant, who ſhould be conſidered as the firſt mover,

and the great ſpring of action in trade, will chearfully purſue extenſive views; and by his fortune, credit, and induſtry, advance the public weal.

§ 2. In ſtates, where the merchants are conſulted previous to the enacting commercial laws, and where the ſecurity of religion, liberty, and property, is a conſtitutional principle, there is the greateſt encouragement to purſue, and good reaſon to expect, a general and univerſal commerce.

§ 3. Tho' merchants, by their experience of the courſe and connection of trade, may be moſt capable of giving the beſt information for proper laws and regulations relative to it; yet as ſome of them may be unwilling to diſcover all its ſecret ſprings, the legiſlature ought to adviſe, not only with merchants, but alſo with thoſe who have particularly ſtudied its political part: and be extremely careful, that neither the one, nor the other, have private intereſts to biaſs, or prejudices to divert them, from giving ſuch advice as may be for the benefit of the public.

§ 4. Many maritime trading cities are as yet without any proper regulations relative to the buſineſs of inſuring; the ſettling averages, and bottomries: and in places, where they have ſome regulations, they are very defective, or at leaſt very obſcure. From whence it is eaſy to infer, that for want of rules to guide, precedents to follow, and mercantile determinations to direct, in affairs of this nature,

nature, many frauds have been committed, and many vexatious law-ſuits have been commenced, to the great expence and diſcouragement of merchants. It is now above two hundred years ſince inſurances were ſet on foot; and if merchants had publiſhed ſome of the moſt remarkable caſes that happened in their time, with the determinations or judicial deciſions of them, a valuable collection might have been made of ſuch precedents, as would have been a rule to others in parallel caſes.

A merchant now reſiding in *London*, conſidering the utility of a work of this nature, has attempted to ſupply in ſome meaſure the omiſſion; not only from his own obſervations on caſes that have fallen within his cognizance during a long and extenſive courſe of commerce both here and in foreign parts, but alſo from the ordinances and regulations that have been made on this ſubject by the greateſt trading nations; as well as from ſuch authors of repute as have occaſionally touched thereon.

§ 5. The principal objects to which particular attention has been, and ſhould be given, are,

Firſt, To prevent, and guard againſt, the commiſſion of frauds by the merchant, or mariner.

Secondly, That no condition, or reſtraint, prevent the increaſe of trade, or hinder new adventures: and

Thirdly, That the public benefit be always preferred to the intereſt of private perſons.

§ 6. That thoſe three points ſhould be the baſis of all laws for regulating inſurances, is indiſputable: but ſuch are the various and complicated circumſtances attending tranſactions of this nature, that general laws cannot provide particular remedies; and therefore diſtinct explanations are neceſſary, to enable perſons to form a proper judgment in different occurrences.

§ 7. If merchants would lay down as a fundamental maxim, that reaſon, public ſpirit, probity and honour, can allow of no other inſurances than thoſe conſonant to the above principles, they would not fall into ſo many ſtrange inventions of unnatural and gaming inſurance; and would be more capable to judge of the rectitude of their caſe, and never (except upon very ſure and juſt grounds) embark in law-ſuits.

§ 8. If we have ventured to add ſome animadverſions on laws already made, it is chiefly in caſes where the courſe of trade is altered; and where additions, or amendments, agreeable to the above principles, are, as we apprehend, wanting.

§ 9. We ſhall inſtance ſome caſes, wherein no determinate reſolutions have been agreed upon and ſettled, at leaſt, that we can find. Such, amongſt others,

others, are the following ones, *viz.* In what caſe the addition of the premium, when a loſs happens, is to be allowed: the different ways of computing the loſs, when total; or when the ſhip or veſſel arrives at her deſtined port, and part only of her loading is damaged, how to eſtimate ſuch damage, *&c.* And in many accidents relating to bottomry, great explanations are, in our opinion, likewiſe wanting. How far our judgment in ſuch intricate caſes deſerves approbation, the reader muſt decide. We are very ſenſible that we are ſubject to error; and ſhall be extremely pleaſed, if any perſon, pointing out our miſtakes, will ſubſtitute what is better, and more to be relied on.

§ 10. If we meet not with the approbation of many merchants, who may think we have kept too much in view the old regulations, and laws, and thereby reſtrained the liberty of trade; let them reflect, that if the terms and clauſes in a policy of inſurance were good an hundred years ago, they are the ſame now: only in proportion as our trade increaſes, and is extended, by the multiplicity and difference of commodities, things may want explanation, and proper bounds, and determinations.

§ 11. Tho' inſurances in general are reputed to be, and doubtleſs are, both uſeful and neceſſary; we muſt, nevertheleſs, beg leave to ſay, that thoſe perſons advance too much, who inſiſt that all inſurances made in *Great-Britain* on the ſhipping or product of foreign countries, are beneficial to this nation: for

for it never has been made appear by experience whether inſurances have, upon the whole, and taking all inſurers together, been attended with profit or loſs.

§ 12. In kingdoms whoſe products are of a peculiar nature, which other countries endeavour to imitate, and to ſupplant them in the ſale of at foreign markets, it would be bad policy to allow of inſurances, by which the competitors may be aſſiſted, and encouraged: but in free cities, whoſe trade conſiſts in importing goods from other places, which do not interfere with their own produce, no diſtinction ought to be made; for there inſurances are, in every reſpect, an encouragement to trade.

§ 13. During the late war, in 1747, the parliament of *Great-Britain*, at the time they prohibited all trade with *France*, took into conſideration, whether the inſurance of goods, imported or exported from *France*, and her colonies, ſhould not likewiſe be prohibited? Many merchants magnified the advantage ariſing from this particular branch of inſurance: ſeveral ſpeeches, ſaid to have been made in parliament on this occaſion, are inſerted in the *London Magazine* of 1748; and all agree in this fundamental point, That no aſſiſtance, or means to preſerve the ſubſtance of the enemy, ought to be allowed of. But thoſe perſons whoſe immediate intereſt it was to execute the orders for theſe inſurances for the enemy, inſiſted, with great confidence, that they were attended with large profits

fits in general; and alledged that money being ſcarce, the making ſuch profits on the enemy ought not to be neglected; and that this lucrative buſineſs ſhould not be driven into other countries, by a prohibition here. Several worthy members of parliament took pains to inquire into the true ſtate of this buſineſs, and to find out whether in reality *Great-Britain* was ſo much benefited by foreign inſurances as was ſuggeſted; and many diſintereſted merchants impartially declared their opinions thereon to the following effect:

1. That the ſuppoſed profit of 3 *per cent.* on a premium of 30 *per cent.* ſaid, in ſome of the abovementioned ſpeeches and calculations of profit, to be actually made, is quite uncertain: that in proportion as the number of the *Britiſh* ſhips of war, and privateers increaſe, much more than is calculated to be gained, may be loſt; and that when only 18 *per cent.* premium was paid for inſurance here, the inſurers, as well as others, actually know they were great loſers by ſuch riſks.

2. That no merchants by any ſkill in computing of chances, or by any other means, can demonſtrate what the profit on any voyages will be; and that all that can be known is, that thoſe alone have reaſon to promiſe themſelves advantage from inſurances, who, in proportion as the premiums riſe and fall, and the circumſtances are more or leſs dangerous, underwrite, or do not underwrite, greater or leſſer ſums.

3. That we have more, or leſs reaſon, to expect profit, or loſs, from foreign inſurance, in proportion

portion as there is a greater or leſs number of perſons who have ſufficient experience, and know how to make a proper choice.

4. That it is evident, if more clear money be paid for loſſes upon foreign inſurances, than the groſs ſums received for premiums, and all charges, amount to, the articles, ſet forth in the above-mentioned calculations, of commiſſion, brokerage, and deductions, are by no means to be conſidered as certain and indiſputable items of profit: for tho' they bring clear ſums into the pockets of the factors, or brokers, who negotiate ſuch inſurances, the loſſes paid by inſurers may greatly exceed the whole foreign diſburſement; and conſequently the balance will be a national loſs. This point, therefore, as we mentioned above, is extremely difficult to aſcertain; but there is a plain, and inconteſtable argument againſt foreign inſurances being made for an enemy, which will always ſubſiſt, ſo long as *Great-Britain* has the ſuperiority of naval power, *viz.* That the great object of a maritime nation ſhould be, to take advantage of any rupture with another trading ſtate, to deſtroy and diſtreſs their ſhipping, and commerce, and to cut off all reſources for naval armaments. But to permit ſuch inſurances is manifeſtly to defeat this end; and is contradictory to common ſenſe: for the government, and private merchants are, on one hand, fitting out veſſels at a great expence to make captures, and to annoy, and diſtreſs the enemy; whilſt another ſet of merchants make good the loſſes, and furniſh means for the continuance of their commerce.

5. When

5. When orders come for inſurances from places, where the eager purſuit of premiums is as ſtrong as it is here, it ſhews a higher premium has been there inſiſted on: and as people on the ſpot can be better judges of the nature of the concern, the navigation, ſhips, commanders, &c. than thoſe at a diſtance, there can be little hopes of profit by inſurances which they reject.

6. That as it is now cuſtomary to accept of eſtimations, in which the foreigner inſured, in caſe of a loſs, finds his account better than if the veſſel had not been loſt, or taken; nay, it is agreed to pay ſuch a ſum inſured, whether on board the ſhip or not; it is evident that ſuch agreements have a bad tendency, as they give ſo much room for frauds.----That no perſon ever had proved to a certainty, whether by inſurance on foreign trade, more, on the whole, had been gained than loſt. ----That it was contrary to ſound and good policy, to grant aſſiſtance to undertakings which were contrary to the general intereſt; and diametrically oppoſite to the intention of prohibiting the trade with *France*, the natural conſequence of which ſhould have been the prohibition of inſuring their ſhips and goods. This is to be underſtood only in times of war, for in thoſe of peace, ſuch inſurances ſhould be conſidered as a buſineſs that is to be left to the free will of the merchant.

It was for theſe, and other prudential reaſons and conſiderations, that the legiſlature enacted the prohibition of inſurance with *France* during the con-

tinuation of the war; which, upon the concluſion of the peace, has ceaſed.

§ 14. As the trade of *Great-Britain* and *Ireland* by ſea is certainly more extenſive than that of any other nation, 'tis the more to be wondered at, that the legiſlature has not laid down any complete regulations or laws concerning inſurances; tho' thoſe who by their buſineſs may have had a multiplicity of tranſactions therein, can declare from experience, that whenever a trial at law happens, the wiſdom and impartiality of the judges, in ſumming up and directing the jury (compoſed of experienced merchants) leaves no room to doubt of their verdict's being according to right and equity, without the preſcription of certain rules or ordinances. It muſt however be remarked, that about three years ago ſeveral perſons endeavoured to obtain an act of parliament to regulate inſurances: but as yet no other act has paſſed, except that which is in the annexed collection; whereby the inſuring on ſhips, without having an intereſt, is prohibited, as well as the taking money on bottomry, without having a property in them equal to the ſum borrowed.

§ 15. As the prohibition in the abovementioned act does not extend to foreign ſhips, it is natural to aſk, how it happens that a greater confidence is put in foreigners, than in the natives? In anſwer to which it muſt be obſerved, that at the time the bill, for the prohibiting of inſurance without having a real intereſt, was depending in parliament, ſome inſurers repreſented, that on ſhips from the *Spaniſh* and

Por-

Portugueſe Weſt-Indies they deſired to run their riſks as a mere wager, rather than return any premium by them received: that is to ſay, they petitioned for the liberty of inſuring upon foreign ſhips *intereſt or no intereſt*. The moſt plauſible reaſon alledged by them was, that the returns expected in ſhips bound to *Spain* and *Portugal*, often remained behind, becauſe the goods ſent out were left unſold. This reaſon was partial: and it ſhews that the legiſlature ought, as has been already obſerved, very carefully to examine and weigh whether the repreſentations made by merchants for enacting commercial laws, are dictated by their own, or the public general intereſt: and a nation ſo remarkable for equity as the *Britiſh*, ſhould particularly be careful in all their laws not to leave any door open for acting unjuſtly, and expoſing, in voyages like the abovementioned, the uninſured property of *Britiſh*, as well as of foreign, merchants to premeditated fraud and circumvention. It is alledged by ſome, that the inſuring, *intereſt or no intereſt*, in this trade, ought to be permitted, becauſe of the impoſſibility, in caſe of a loſs, to get authentic certificates to prove it. This is wholly groundleſs, for no court of judicature can deſire ſtronger proofs than the nature of the thing will admit of, or than can be procured; but even in *Spain*, in prohibited trade, it is poſſible to get depoſitions ſworn either before foreign conſuls, or credible church-notaries: 'tis a known maxim with the *Spaniſh* tribunal of commerce, *Que la juſticia ſea executada, y la buena fee guardada*;

i. e. Let juſtice be executed, and good faith and confidence preſerved.

§ 16. To the abovementioned act made in *Great-Britain* relating to inſurance, we have thought fit to add an intended regulation in affairs of inſurance which was examined, and approved by a committee of lawyers and merchants, appointed by the legiſlature in 1747-8; for tho' theſe regulations cannot be deemed laws, until they have the ſanction of parliament, yet foreigners, who have inſurances made in *England*, may thence be informed, that the ſame fundamental principles govern here, as elſewhere. It was owing to the repreſentation of ſome merchants, that the forementioned regulations were not carried into a law: they pretended that it required time to conſider of them; and that the nature of the *Weſt-India* trade was ſuch, that it did not, nor could not well allow that perſons ſhould be obliged to produce a proof of the weight or meaſure of their own goods. It is evident this pretence was ill grounded, ſince neither weights nor meaſures can be wanting, where goods are ſhipped off; and conſequently both may, by the declaration made when ſhipped, by bill of loading, invoice, &c. be proved. But it ſeems to be the common maxim of thoſe who ſit at the helm in theſe kingdoms, When things are not very urgent, to leave merchants to agree among themſelves, and work on.

§ 17. It muſt be allowed that regulations relating to inſurances are ſeldom permanent, and invariable.

variable. A *Spaniſh* policy inſerted in this collection, and now in uſe at *Cadiz*, ſhews how much it differs from the forms preſcribed by their ordinances. A deviation from their laws in the model of their policies in *France* we have likewiſe inſerted. Nevertheleſs, juſt laws will always retain their due weight in courts of juſtice, as they ſerve for a rule to go by in deciding matters, when agreements have been made by private contract, and the parties have neglected to fulfil them, or are ſuſpected of not having acted *bona fide*. Thoſe perſons who are equitable and reaſonable, require no compulſion by laws and ordinances to do juſtice; yet, as laws and ordinances ſerve to explain to every one, wherein right and equity conſiſt, they are of great uſe in forming a perſon's judgment. Thoſe merchants who are averſe to rules, and deſire to have every thing tranſacted in the dark, create ſome ſuſpicion of their having ſiniſter views. A creditable merchant can never want buſineſs, ſo long as he minds it with unwearied application, and goes on in a plain, honeſt, open way. Myſtery, and a ſeeming cunningneſs, generally create diffidence. Inſurers, who do not underwrite without circumſpection, and, like prudent perſons, inform themſelves of every thing, that they may not be injured, generally have a real ſubſtance to anſwer contingent loſſes. Thoſe who are moſt juſt, and ready to pay, when loſſes happen, will have the moſt policies brought to them to underwrite, and the greater conſequently their choice will be. Such whoſe judgment is ſound, duly weighing all circumſtances,

ſtances, as well with reſpect to the goods, as to the perſons inſuring, the condition and well-ſtoring of the ſhips, the voyage, &c. may, on theſe conſiderations, underwrite at lower premiums than uſual, and thereby may incite others to fit out their veſſels in the ſame good condition. The conſequence of all this is, that the lives of our ſeamen are leſs expoſed, and the general good is advanced and ſupported: whereas thoſe who underwrite without diſtinction, or weighing of things, expoſe themſelves and others to ruin.

§ 18. Thoſe merchants, or inſurers, who, when required, give true information what trade may be, or is, prejudicial or dangerous to a ſtate, ſhew they are the moſt fit perſons to judge of matters relating to trade; and therefore very juſtly deſerve the honour of being conſulted when new laws are in agitation for its protection. The part they act is not only commendable, but meritorious: for by adviſing, and forwarding ſuch laws as ſecure to the trader the ſafe and peaceable enjoyment of his traffic, they at the ſame time advance the good of the public in general.

CONTENTS.

ESSAY on INSURANCES.

§ 1. THE Meaning of an Insurance, 1
2. Its Origin and Antiquity, ib.
3. Its Utility, 2
4. Persons who may insure, ib.
5. The Essentials that are to be expressed in a Policy of Insurance, 3
6. Diversity of Forms of Policies, 4
7. What Things may be insured, ib.
8. Restraints in Insurances, 5
9. Damages which accrue in foreign Parts, and are adjusted there, ought to be settled here according to such Adjustment, though the Regulations which were followed should be contrary to our Laws, ib.
10. Customs inconsistent with Reason and Justice ought to have no Weight in Courts of Judicature, 7
11. In what Cases it is more advisable to particularise the Goods insured in the Policy, 8
12. In what to declare them under the general Term of Merchandize, ib.
13. Though an Insurer has signed under the general Expression of Merchandize, yet ought he not to make good any Damage proceeding from the Quality of Commodities not specified, in the Contract or Policy, as liable by their Nature to Damage, 9
14. The Ordinances of some Countries particularly set forth what sort of Goods shall not be insured under general Expressions, ib.
15. Insurers are not liable to make good a Confiscation of Gold and Silver at the Places where their Exportation is prohibited; but they are when seized on searching foreign Ships at Sea, 10
16. Whoever loads Goods, and will run one Part of the Risk himself, or insures them at different Places, ought from the Beginning to chuse what Goods he will have inserted in each Policy, and which he will reserve for himself, 11
17. Insurance on Ship, or Ships, 13
18. Limitations in different Parts concerning the Insurance of Freights, 15
19. Sailors Wages not to be insured, 18
20. Insurance may be made on Money lent on Bottomry, &c. 19
21. Insurances on Bottomry when, and where, free from gross Average, ib.
22. The Lenders of Money on Bottomry shall contribute to the easing those who take it, in the gross Averages, 22
23. The Obligation of Bottomry-Bonds best expressed in Spain, 24
24. Bottomry-Contracts how understood in England, ib.
25. Insurances permitted on imaginary Profits, 27
26. Insurers should be very circumspect in signing Policies on Interest or no Interest, 28
27. Insurances on the Rise or Fall of Goods by way of Wager, 29
28. Insurance on Lotteries, 30
29. Insurance against Fire, 31
30. Insurance on Lives, 32
31. Insurance on Cattle, 34
32. When Goods insured are valued in the Policy, no Account of their Cost is required, 35
33. All such Valuations should stand good, except when there is Evidence of a Fraud, ib.
34. Valuations in the Lump do not answer the End in particular or partial Losses, ib.
35. Valuations are by some Circumstances rendered absolutely necessary, 36
36. Other Reasons for Valuations, ib.
37. When no Valuation is made in the Policy, it is the Cost of the Goods with all Charges till on Board, and the Premium of Insurance included, that makes the Value insured, 37
38. The Difference it makes, when Goods come to a gaining Market, valued or not valued, reconciled, 38
39. The Difference it makes when Goods come to a losing Market valued or not valued, also reconciled, 40
40. If Goods are brought from Places where no Bills of Exchange can be had, but most of the Returns are in Specie, their Value ought not to be reckoned at more than what the Specie from thence will produce neat, 41
41. If Goods are shipped from Places whence any Returns seldom come in Specie or Bills of Exchange, the Value of

ſuch Goods cannot well be inſured at, or reputed to be worth, more than what according to the current Prices they would have yielded neat at the Time of making the Inſurance, 43
42. The Time and Place when, and from whence, the Riſk of an Inſurance upon Goods commences; and when, and where it ends, 44
43. The Time allowed for unloading Goods after Arrival, 46
44. When the Riſk of an Inſurance on a Ship commences and ends, 47
45. Places circumjacent, when underſtood to be under one and the ſame Port, 48
46. When Inſurances are made for Perſons who have any Share in the Direction of the Voyage, Inquiry ought to be made whether the Maſter touches in his Way at any Place, by their Direction, 49
47. Shortening the Riſk for the Inſurers cannot be deemed unlawful, ib.
48. Riſks which the Inſurers are to anſwer for, 50
49. Riſks for which the Inſurers are not liable, ib.
50. In the Navigation of Ships from *Cadiz* to *America* the Ship is bound to make good what Damages the Merchandizes receive within Board, 51
51. What Damages Inſurers ought to pay for Loſs of Cables, Maſts, *&c.* and what not, 52
52. Conditions between the Eaſt-India Company and Owners of Ships, about Damages and Averages, 55
53. General or groſs Average, ib.
54. For how much, or for what Value, the Ship is to contribute in Caſe of a general Average, 57
55. For how much, or at what Value, the Goods are to contribute, in caſe of a general Average, 59
56. For how much, or at what Value, Gold and Silver ought to contribute to a general Average, 62
57. Particulars that are to be admitted into general or groſs Averages, 64
58. The Manner of finding out the true Total or Sum whereon the Repartition of a general Average is to be made, 69
59. What Particulars belong to petty or accuſtomary Average, to be borne one Third by the Ship, and two Thirds by the Cargo, 72
60. The ſimple or particular Average to be made good by the Inſurers, 73
61. No ſimple or particular Averages under Three per Cent. are paid by the Inſurers, ib.
62. In what Caſes the Inſurers are liable for Damages reſulting from Captures, Detentions, or Repriſals, 75
63. The Inſurers muſt pay for the Faults and Thefts of the Maſter and Crew, ib.
64. What Damages the Inſurers are to pay on Ship and Goods, in Caſe of Stranding, 76
65. What ought to be ſaved firſt in Caſe of Stranding or Shipwreck, ib.
66. How the Damage is to be borne when two Ships run foul of one another, 78
67. The Premium expreſſed in a Policy of Inſurance ſhews whether the Riſk was more than common, or not, 81
68. Premiums to be paid in ready Money, or within ſuch a limited Time as the Inſurers ſhall agree on, ib.
69. What Right an Inſurer has to the Premium when the Inſured becomes inſolvent, 82
70. What Right an Inſured has againſt an inſolvent Inſurer's Eſtate, 82
71. The Difference of Premiums in former Times, and at preſent, 83
72. The Difference at preſent between Winter and Summer Premiums, 84
73. The Date when a Policy is ſigned ſerves to compare with Proofs offered to aſcertain the Time when Facts happened; and to diſcover whether there is Reaſon to ſuſpect any fraudulent Concealment, ib.
74. Inconſiſtency of the Laws of ſome Places to vacate Inſurances on a Poſſibility of conveying bad News at the Rate of a League or a League and a half per Hour from the Time and Place of the Misfortune, 86
75. What Proofs or Documents are required to recover a Loſs, 87
76. In what Time Loſſes or Damages are recoverable from Inſurers, 89
77. Returns of Premium, 90
78. The Cuſtom in what Manner Returns of Premium are made; and to what Policies applicable, differs at different Places, 91
79. When

79. When Orders are given to insure abroad, the Insurance should commence from the Date of such Order, 92
80. Of Re-Insurances, 93

Remarkable Cases of Insurances, Averages and Bottomries.

CASE
1. Shewing what Sum ought to be insured, so that, in Case of Loss, the Principal, the Premium, and Interest may be recovered, 96
2. Proving what yearly Interest was made, when Money on Bottomry at *London* for *China* was lent at 40 per Cent. and the Premium of Insurance out and home was at 20 per Cent. supposing the Lender to be in Disburse two Years, 103
3. Shewing how it was allowed to a Person over-insured at *London* to recover, on a Loss, not only so much of his Premium as was sufficient totally to reimburse himself for the Premium he paid; but likewise what Deductions were made in order to pay him 98 l. for each 100 l. underwrote, 104
4. Shewing in what Manner the Account of a Return of Premium is to be made out on an Insurance made from *Vera Cruz* to *Cadiz* on Silver, when the Quantity expected has not been shipped, 106
5. Shewing how, upon the Loss of a Spanish Silver Flota, the Charges of Salvage were divided, partly as a general Average upon the Treasure of the whole Fleet, partly as a particular Average upon each Ship, and partly upon each Species of the Goods saved, 110
6. Shewing that the changing Effects shipped at *Vera Cruz* into others at the *Havanna*, does not annul the Risk of the Assurance; but that the same is not to be charged with any thing that does not actually proceed from such Effects, as it was decided by Arbitration at *Cadiz*, in 1734, 137
7. Shewing how the Value of Money and Goods from the *Spanish West-Indies* was calculated at *London* to regulate an entire Loss, and the Return of the Premium, 140
8. Regulation of the gross and general Average upon the Ship *le Mentor de Bourdeaux*, Capt. *Nicholas Elie Mée*, occasioned by the bad Weather she met with on her Voyage from *Bourdeaux* to *Martinico*, 146
9. Shewing the Regulation of a gross Average which happened to the Ship *la Couronne de Rochelle*, Capt. *Auriaud*, and to the Goods shipped on board her, on her Voyage from *St. Domingo* to *Rochelle*, where she arrived the 19th of July, 1747, 160
10. Shewing, in two Instances, how a gross and general Average was settled at *London*, though in neither to a true Exactness, 170
11. Shewing how a general Average was regulated at *Hamburgh*, according to the Market-Price of the Goods at the Place where they were landed, 174
12. Shewing how a general Average was to be calculated at *Hamburgh* according to the Value of the Goods at the Place where they were shipped, 181
13. Shewing how a general Average was settled at *Leghorn*, 187
14. Shewing how a particular Average on Sugar was calculated at *Hamburgh*, 208
15. Shewing how a particular Average was computed at *Hamburgh* upon some Goods shipped for *Cadiz*, 212
16. Shewing how a particular Average on Goods shipped for *Lisbon* was regulated at *Hamburgh*, 216
17. How the Loss of a *Spanish* Prize, called the *Nympha*, was adjusted with the Insurers at *London*, 220
18. Shewing how, and upon what Value, the Buyers of the three Fourths of the Quicksilver in the *Nympha*, mentioned in the foregoing Case, ought to have contributed to the Salvage, 236
19. Shewing in what Manner the Owners of Goods contributed to the Charges of Salvage on the Amount of their Value at *Cape François*, or at the Place where they were landed, for what they yielded more than their Cost and Premium insured on them, 245
20. Shewing how the Charges for Repairs should be demanded, as well from the Insurers upon the Ship, as from the Insurers upon the Freight; and for how much thereof they ought to be liable in this Instance, 250
21. Shewing how the Loss upon a Parcel of

Hemp, which was refuſed on Delivery by the Buyer, was calculated and demanded at a loſing Market according to Prime Coſt; and the Inſurer, on the Contrary, inſiſted that the ſame was not regular, 256
22. Shewing how a particular Average upon Goods was calculated at *Liſbon*, according to the Price there; and was ſettled with the Inſurers in *London*, 259
23. A Policy of Inſurance upon the Life of Cattle, 267
24. Shewing how a general and particular Average upon a Cargo of Hides and Lead, by the Ship *Induſtry*, Capt. *Wm. Henry*, from *Liverpool* for *Leghorn*, 272 was ſettled at the laſt-mentioned Place,
25. A Regulation made at *Leghorn* by way of a groſs Average for the Ranſom of a Cargo of Wheat from *London* in the laſt War; ſhewing, 1. What was paid by the Inſurers at *Leghorn*; 2. What was paid by the Inſurers at *London*, 290
26. Shewing how a general Average was regulated by the Commiſſioners of the Aſſurance-Court of *Amſterdam*, 308
27. A general Average for Charges of reclaiming a Cargo of Sugars detained in *England*, regulated at *Hamburgh*; and a particular Average upon the Sugars ſettled at *London*, 323
28. Shewing in what Manner the Charges on Goods ſaved from a Shipwreck near *Cadiz* were proportioned, and what Freight was allowed thereon, 354
29. Regulation at *London* of the Freight of the Quickſilver on board the *Nympha* Prize, 362
30. Proving that too much Freight was allowed on the Lading which was ſaved out of a Ship which was wrecked near *Marſeilles*, 363
31. An Enquiry what Premium ought to be paid in the ſeveral Degrees of Age, 377
32. Shewing how ſoon an Eſtate in Reverſion may be greatly incumbered by borrowing Money at Intereſt beforehand, and paying a Premium of Inſurance for Life, 382
33. Of Inſuring Lottery-Tickets, 385
34. Shewing that Perſons abroad, advancing Money to Maſters of Ships on Bottomry, ought to be convinced of the Neceſſity for ſuch a Loan, and to ſee that the Money be actually employed for the Uſes alledged, 389
35. Remarks from Ricard's *Negoce d'Amſterdam*, on Bargains at Option in Goods for Premiums or Inſurances, to have the Refuſal of Goods at a certain Price, 401
36. Shewing in what Manner a Diſtribution was made to the Inſurers and others on Goods the Property of Enemies taken in a *Dutch* Ship, and condemned at Doctors-Commons, and afterwards reſtored by the Lords of Appeal, 405

Some brief Hints to Merchants and Inſurers concerning the Riſks to which Trade and Navigation are expoſed in Time of War, 429
Expoſition of the Motives which determined the King of *Pruſſia* to lay an Attachment upon the capital Funds which his Majeſty had promiſed to re-imburſe to the Subjects of *Great-Britain*, in Virtue of the Treaties of *Breſlau* and *Dreſden*; and to procure, out of the ſaid Capitals, to his ſaid Subjects, an Indemnity for the Loſſes which they ſuſtained by the Depredations and Violences of the *Engliſh* Privateers, exerciſed upon them in the high Seas, 437
The Duke of *Newcaſtle*'s Letter, by his Majeſty's Order, to Mr. *Michell*, the King of *Pruſſia*'s Secretary of the Embaſſy, in Anſwer to the Memorial, and other Papers, delivered by Mr. *Michell* to the Duke of *Newcaſtle* on the 23d of November, and 13th of December 1752, 481
Remarks, 518
Extract from the Letters written by the *Dutch* Miniſters in *France* and *England* to the Penſionary *J. De Witt*, from 1653 to 1667, 523
Extract from Sir *Leonine Jenkins*'s Memoirs, who was Judge of the Court of Admiralty at *London*, 525
Traité & Covention entre *Guillaume III.* Roi de la *Grande-Bretagne*, & les Seigneurs *Etats-Généraux* des *Provinces-Unies*, pour interdire toute Sorte de Commerce ou Trafic avec les Sujets du Roi *Très-Chrétien*, non-ſeulement de la Part de l'*Angleterre* & des *Provinces-Unies*, mais auſſi de la Part des Sujets des autres Rois, Princes, ou Eſtats, 528
APPENDIX. A famous Inſurance Cauſe pleaded before the Houſe of Lords, 533
Some mercantile Obſervations thereon. 559

AN

ESSAY ON INSURANCES.

§ 1. BY Insurance in Trade is understood a written Contract between Parties. This Contract is called a Policy. The contracting Parties are, the Insured, who pays a Consideration, which is called Premium; and the Insurer, who receives it. For this Premium the Insurer engages to satisfy, and make good to the Insured, unless a Fraud appear, any Loss, Damage, or Accident that may happen; according to the Tenor of the Contract or Policy. The Meaning of an Insurance.

§ 2. Such Contracts, *Grotius* observes (*De jure bel. & pacis, Lib.* ii. *cap.* 12. § 5.) were unknown to the Antients. *Gerard Malynes*, in his *Lex Mercatoria*; *Molloy*, *De jure maritimo*, and several other *English* Authors, seem to favour a contrary Opinion, founded on a Passage of *Suetonius*, in *Vita Claudii*, *Cap.* 18. which alludes somewhat to Insurance: But the learned Civilian and Senator *Langenbeck* of *Hamburgh*, in his Annotations on Insurances, has very judiciously and evidently shewn that the Meaning of *Suetonius* was no more than this; That in Time of public Danger, whenever any private Man's Property should be made Use of for the Service of the Commonwealth, the Loss and Damage of the private Person were to be made good by the Public. This is founded in Justice and Equity; and is followed at this Time by all Governments that are guided by equitable Principles: But it cannot be paralleled with the Insurance which we treat of; which is a Matter of Choice, and for Conveniency's Sake, between private Persons. Concerning Insurance of this Nature we meet with nothing older, than an Ordinance made at *Barcelona*, mentioned in *Casaregi's Consolato del Mare*, or a Treatise on the Sea-Laws of *Oleron*, which, though without Date, by some Its Origin and Antiquity.

ſome Facts it recites, ſeems to have been made about the Year 1435; and by the Preamble to this Ordinance it appears that not many others had preceded it, ſince it begins with theſe Words; "Whereas in Times paſt but few Ordinances of In-"ſurance have been made; which Defect wanted Correction, "and Amendment," *&c.* But in 1481, the Crown of *Aragon* being united to the *Spaniſh* Monarchy by the Marriage of *Ferdinand* the *Catholic* with *Iſabella* Heireſs of *Caſtile*, the *Catalans* became ſubjected to the Laws of *Spain*, and therefore no farther Notice is to be taken of their particular Laws at *Barcelona*. The next remarkable Ordinance is one made at *Florence* in 1523, which is ſtill in Force at *Leghorn*. Of this, as well as of others worth Notice relating to Inſurances, a complete Collection will be found in this Eſſay.

Its Utility.

§ 3. Inſurances promote Trade and Navigation, as thereby the Riſks of diligent, induſtrious, and inventive Perſons, of ſmall Capitals, are ſo leſſened, that they may engage even in important Undertakings: It is eaſily underſtood how the Public are benefited hereby: And by taking ſuch Precaution, as making Inſurance, a greater Share of Confidence too is acquired amongſt moneyed Men, who ſeeing this wary Way of proceeding of the Merchant, are the more ready to aſſiſt him with their Money, or to maintain his Credit, by freely taking his Bills of Exchange. But though this be allowed, yet as the beſt Inſtitutions are ſubject to Abuſe, certain Bounds and Regulations are neceſſary, which, whilſt they give ſuch Latitude as may promote and encourage Trade, ought not to be ſo extremely wide as that ill Conſequences may enſue. That this Conſideration ſhould be attended to in enacting all Laws and Ordinances relating to Inſurances, is not to be controverted; nor that it ſhould alſo be had in View, in the Explanation and Application of thoſe Laws to particular Caſes. In our Eſſay we ſhall do our utmoſt to point out, whatever Experience has ſhewn to deſerve Attention, and in what Reſpects there ſeems to have been either too much, or too little Latitude given.

Perſons who may inſure. Perſons who may not.

§ 4. Every Perſon may inſure, who by the Laws of his Country has a Right to diſpoſe of his Property [*a*]. But in ſome Places where Ordinances relating to Inſurances are in Force, many are excepted; particularly thoſe concerned either in the Management or Direction of them; as Inſurance Brokers,

kers, Commiſſioners, and Secretaries of any Chambers or Tribunals for judging of Differences that may ariſe in this Branch of Buſineſs, ſince they ought all to be Men ſtrictly impartial [*b*]. At *Stockholm* any Perſon may get Inſurance done for him, Ship and Inſurance Brokers alone being excluded [*c*].

Perſons who may get Inſurance made for them. Perſons who may not.

[*a*] By the *Koningsberg* Ordinance, N°. 772. by that of *Hamburgh*, N°. 877. and that of *Stockholm*, N°. 1022. all Perſons that are of Age may inſure.

[*b*] Except in *England*, Brokers may not inſure. See *Hamburgh*, N°. 878. *France*, N°. 730. *Amſterdam*, N°. 550. *Rotterdam*, N°. 288. *Spain*, N°. 74. *Stockholm*, N°. 1022. At *Hamburgh*, the Perſon choſen by the Admiralty for regulating Loſſes and Averages, who muſt be a Man of Experience and Abilities, and is ſolemnly ſworn, is alſo excluded. *See* his Oath in *Langenbeck*, Page 201. farther explained in *Hamburgh* Ordinance, N°. 878.

In *France*, N°. 730.
Rotterdam, N°. 290.
Stockholm, N°. 1022.
} The Deputies, Commiſſioners, and other Officers in the Inſurance Courts of Judicature, are not permitted to ſign Policies; but at *Middleburg* they may. *See* N°. 205.

In *Stockholm*, the Directors, and Clerks, of the Inſurance Company, are alſo denied the Liberty to ſign Policies. N°. 1022.

[*c*] But by the ſaid N°. 1022. it is at *Stockholm* allowed to every one to get themſelves inſured, except Inſurance and Ship Brokers.

§ 5. Eſſentials in a Policy or Contract of Inſurance are, 1ſt, The Perſon's Name for whom the Inſurance is made, to which this unlimited Declaration is commonly added; *for his own or any other Perſon's Account.* 2dly, The Goods, or Ships, or their Value, or, in ſhort, the Thing itſelf, upon which the Inſurance is made. 3dly, The Name of the Place, where the Goods are laden, whither bound, the Time when the Riſk begins, and when it ends. 4thly, All the different Kinds of Dangers, which the Inſurer takes upon him. 5thly, The Conſideration, or Premium, received, together with the Name of the Broker employed in the Tranſaction. 6thly, How much ſhall be paid in caſe of Loſs, and when due. 7thly, The Day, and Year, the Contract or Policy is executed. 8thly, The News, or Advices, relating to the Adventure, at the Time of making the Contract, or Policy.

The Eſſentials that are to be expreſſed in a Contract or Policy of Inſurance.

Note, The Requiſites of a Policy are ſet forth in the ſeveral following Ordinances:

Amſterdam, N°. 513. *France*, N°. 665. *Koningsberg*, N°. 773. *Hamburgh*, N°. 874. *Stockholm*, N°. 1031.

And as to the Obligation the Inſured is under, in what Manner he is to act, and what he ought to declare, on making and preſenting a Policy of Inſurance, ſee particularly the Ordinance of *Copenhagen*, N°. 1261.

Diverſity of Forms of Policies.

§ 6. There are ſeveral Kinds and Forms of Policies, in which the common Circumſtances of an Inſurance, and the Perils which the Inſurers take upon them, are ſet forth; and Blanks left for inſerting the Particulars abovementioned, with the ſeparate Conditions agreed on. Almoſt every Country has its particular Cuſtoms and Forms: And as ſuch a Variety of Things and Circumſtances occur, for which Perſons inſure, 'tis almoſt impoſſible to reduce all to certain and determinate Laws; or to deſcribe ſo many different Forms of Policies, as might exactly fit every Caſe. It often happens that the Meaning of the Parties is not rightly explained in the Policy; nay, the printed and the written Words frequently contradict each other; ſo that to do Juſtice, in theſe and other controverted Caſes, it is indiſpenſably neceſſary to comprehend the Tranſaction itſelf well: And when the true Meaning of the Parties concerned is aſcertained, the Inſurer will be obliged to make good what he received a Premium for. Great Care however muſt be taken, not to give Encouragement to premeditated Deceit, or to Things which may be of bad Conſequence, though not done with a fraudulent Deſign.

See the Form of a Policy of *Florence* in the Year 1523, N°. 11. Of *Leghorn* in 1750, N°. 18. Of *Antwerp* in 1563, N°. 51. Of *Cadiz* in 1618, N°. 105, 115, 119, 126, 128. *Ditto* in 1725, N°. 131. Of *Amſterdam* in 1744, N°. 573, 574, 575, 576, 577. Of *Hamburgh* in 1731, N°. 1011, 1012, 1013, 1014, 1015, 1016, 1017. Of *Stockholm* in 1750, N°. 1206, 1207, 1208, 1209, 1210, 1211. Of *Copenhagen* in 1746, N°. 1259, 1260. Of *London*, N°. 1334.

What Things may be inſured.

§ 7. By modern Laws or Cuſtoms Inſurances may be made on divers Kinds of Merchandizes; on Ships; on the Freight, or Hire of Ships; on the Money for fitting out of Ships; on Bottomry, or Money borrowed on the Keel of a Ship; on Ships and their Cargoes jointly; on the Profit expected by the Goods [*a*]; on Intereſt, and no Intereſt, that is to ſay, without farther Proof of Intereſt than the Policy [*b*]; on the Riſe, or Continuance of the current Price of Merchandizes [*c*]; on Houſes; Warehouſes, Cellars, and the Value of Goods laid up therein, againſt Danger from Fire; on Fiſheries; on the Lives of Men and Cattle; on Lotteries, *&c.* the whole according to the Circumſtances that may happen among the contracting Parties: Each of which Articles will be more particularly ſpoken to, in the Sequel of this Work.

[*a*] Or-

[a] Ordinance of *Hamburgh*, N°. 881, 882, 883.
of *Amſterdam*, N°. 518, 520, 521, 526, 527, 528, 529.
of *Stockholm*, N°. 1023, 1024.

[b] In *England*, by Act of Parliament, on foreign Ships only. *See* N°. 1293.

[c] *See* Caſe 35.

Reſtraints by Inſurances.

§ 8. Though all antient, and ſome modern Ordinances relating to Inſurance, enjoin the Inſured, in explicit Terms, to run Part of the Riſk themſelves; nay, in ſome Caſes, that are likely to give Occaſion to Fraud, forbid Inſuring at all; yet we find that ſuch Injunctions and Prohibitions are commonly evaded, and ſeldom long complied with: The Cuſtom of overlooking or diſpenſing with the Diſpoſition of the Law in thoſe Reſpects has crept in every where; and when a Judge (in Caſes of Diſpute) finds no viſible Fraud committed, he cannot well act otherwiſe, than to oblige the Merchants to adhere to, and fulfill their Contracts, as the beſt Way of promoting Credit, and Trade in general.

In *France* the Ordinance N°. 680. ſays, "The Perſons that inſure their "Goods, ſhall ſtill run the Hazard of the tenth Part of the Effects they "load, except there be any poſitive Clauſe in the Policy, declaring they "mean to inſure the whole:" And (N°. 681.) it ſays, "If the Inſured "be in the Ship, or if they be Owners, they ſhall run the Riſk of one "Tenth, even though they declare, that they mean to inſure the "whole." Which Diſtinction between People who have, or have not, a Hand in the Direction of the Voyage, is a very judicious one. Nevertheleſs by the *Havre de Grace* Policy, N°. 770. it appears that the People there affect to be under no Reſtraint, ſince they ſay therein; "It ſhall be lawful for the Inſured to inſure in full, and even the Premium if he "pleaſes, becauſe we renounce that Article in our Ordinance, and all "others which are contrary to this Policy." So that it may very well be aſked, what Purpoſe can any Ordinance ſerve, if private Men have it in their Power to ſet it aſide, and do what they pleaſe? However, 'tis known that ſuch a Renunciation will not ſtand good in any Court of Judicature in *France:* and though private Inſurers in thoſe Parts do, and in Honour ought to do, Juſtice between Man and Man, when they have no Reaſon to ſuſpect a Fraud; yet in Countries where Laws to the contrary are in Force, People have leſs Temptation to, or Opportunity for Guile and Deceit, than in thoſe wherein no Bounds are ſet to their Actions.

Damages which occur in foreign Parts, and are adjuſted there, ought to be ſettled here, according to ſuch Adjuſtments tho' the Regula-

§ 9. Though by the oldeſt Ordinance relating to Inſurances, made at *Florence* in 1523 (ſee N°. 1.) as well as by the lateſt (N°. 1021.) made at *Stockholm*, it appears that different States adopt the ſame Sentiments in the Introduction, which is, "That "all Inſurances in their reſpective Dominions, whether made "for their own Subjects or Foreigners, ſhall be conformable to "the Tenor of their Ordinances, and that no Regard ſhall be

tions which were followed ſhould be contrary to our Laws.

" paid to what may be alledged of the Cuſtoms of others :" Yet we would ſurmiſe, that theſe, and other Legiſlators could not mean to extend their Diſpoſitions beyond their own Juriſdictions: For if it were ſo, no Inſurances could be well made on Adventures in foreign Parts, and much leſs could Commiſſions to inſure for foreign Accounts be admitted. For Example, *A* at *Hamburgh* has Goods in *Spain*, which are ſent by a *Spaniſh* Ship to the *Weſt-Indies*. *B* at *Hamburgh* inſures them. Some damage happens in the Voyage, which, according to the *Spaniſh* Law, or Regulations made in that Country, has been deemed a groſs Average, and therefore charged upon *A*'s Effects in Proportion to their Value. This Charge he has an undoubted Right to demand of *B* his Inſurer, though by the Law at *Hamburgh* the Damage ſhould not have been declared a groſs Average, but a particular one on the Goods damaged. To corroborate what we alledge we will add, that though in the Ordinance of *Hamburgh* (N°. 873.) it is ſaid, " That " every Thing relating to Inſurances, and Averages, ſhall be " judged and decided by that Ordinance," yet another Article " in the ſame (N°. 987.) allows, " That when any Damage " happens to the Ship and Cargo during her outward-bound " Voyage, it may be regulated at the Place of her unloading." Moreover, the Ordinance of *Amſterdam* (N°. 512.) ſays, " That " all Stipulations, and Conditions, inſerted in Policies, con- " trary to the ſaid Ordinance, ſhall be null and void, notwith- " ſtanding the contracting Parties may have renounced it." Yet in another Article (N°. 551.) it is ſaid, " Except ſuch groſs Ave- " rages were regulated in a judicial Manner, at the Place whi- " ther the Ship was bound;" conſequently we infer that their Ordinance reaches not beyond their own Juriſdiction. Frequent Inſtances have been met with, in which Laws and Cuſtoms have been unjuſtly made a Pretext to deny the Satisfaction that was due to Foreigners: One we ſhall mention. A Perſon in *London*, for his Friend at *Bourdeaux*, got 1000 *l.* Inſurance made from *Martinico* to *Bourdeaux*: The Perſon at *Bourdeaux*, imagining that his Effects might amount to double that Value, had before inſured there 1000 *l.* Both Inſurances were made under the general Expreſſion of *Goods*. On the Ship's Arrival, no more than 800 *l.* Value was found to be ſhipped. The Inſurers at *Bourdeaux*, who had firſt underwrote upon thoſe Goods,

kept

kept the Premium on 800 *l.* and returned the Proportion on 200 *l.* according to the Ordinance, N°. 686. Upon a Demand of a Return of Premium on the whole 1000 *l.* as laſt inſured, by the Perſon at *London*, the Inſurers replied, that, according to the Cuſtom of *London*, thoſe at *Bourdeaux* ſhould have returned the Premium proportionally with them, and conſequently that the whole upon the 2000 *l.* ſhould have been equally ſhared: Which naturally ſuggeſts the following Queſtion; Suppoſe both Inſurances had been made on Goods expected in that Ship on the Account of a Perſon in *London*, and that in her Voyage ſhe had been loſt, and that no more than the Value of 800 *l.* had been found to have been put aboard her: Would it have been diſputed in *France* that the Inſurers at *Bourdeaux*, having ſigned firſt, were obliged to pay in full the 800 *l.*? Certainly not; ſince their own Laws ſo ordain it. However ſuch Equivocations and Diſputes may always be avoided, by expreſſing in the Policy, which Inſurance ſhall ſtand good firſt: And if this be declared when the Inſurance is made, the Inſurers in *London*, or elſewhere, will never refuſe to underwrite.

§ 10. Approved Cuſtoms among Merchants ought doubtleſs to be greatly regarded; but the Cuſtom of not returning the Premium in the Caſe abovementioned, after a clear Demonſtration of its Unreaſonableneſs, would not be admitted, we apprehend, by a Jury who ſhould duly weigh the Matter before them [*a*]. There was a Cuſtom of long ſtanding relating to what Sums might be inſured: But upon a plain Demonſtration and Conviction of its Abſurdity, it was ſet aſide. *See* Caſe 3. N°. C. Another great Error which was formerly practiſed has alſo been rectified, *viz.* the not making a proper Deduction for Freight, Indulto, *&c.* on Dollars by *Spaniſh* Ships from *America*, which is proved by Caſe 4, N°. A, C. Our particular Cuſtoms at home ought not to be made a Reaſon for denying what is juſtly due to People abroad who give us their Premiums; ſince the Intent and Meaning of thoſe who pay a valuable Conſideration for Inſurance, is, that the Inſurers ſhall ſtand in their Place and Stead; with this particular Obligation however, that the Inſured ſhall neglect or omit nothing that may be for the Intereſt of the Inſurer, whoſe Right is properly to be ſet forth and defended. For want of proper Allegations in favour of abſent Inſurers, when Damages accrue, many

Cuſtoms inconſiſtent with Reaſon and Juſtice ought to have no Weight in Courts of Judicature.

many Regulations are obtained by intereſted Perſons, very much to the Prejudice of thoſe Inſurers. This is not to be wondered at, ſince the Judges in thoſe Matters may not be ſufficiently informed of Circumſtances conſonant even to their own Laws, on which they might ground their Deciſions. Therefore as ſome Laws by not taking in every Circumſtance may want Explanation in many Points, this eaſily accounts for the Fault found even with authentic Regulations from Abroad.

See Caſe 8. N°. P, Q, R.
Caſe 24. R, S.
Caſe 25. H, P.
Caſe 30. G.

[*a*] The learned *Shuback*, Keeper of the Archives of *Hamburgh*, in a Treatiſe publiſhed there *Anno* 1751, entitled *De Jure Littoris*, with great Judgment ſhews, that the Plea of Cuſtom, where the Cuſtom is bad, ought to be of no Weight in the Deciſion of Controverſies; and quotes a Caſe as old as the Year 1445, wherein the Magiſtracy of *Hamburgh* had been choſen Arbitrators, between the Duke of *Mecklenburg*, and the City of *Lubeck*, to decide a Diſpute about Salvage; and upon the Duke's inſiſting ſtrenuouſly on the Right of Cuſtom, his Plea was replied to, and finely explained by the ſaid Arbitrators, who would not allow that any Cuſtom could be of Weight, that was inconſiſtent with Equity; Mr. *Shuback* ſays, Page 194, *Optime tamen ex parte Hamburgenſium reſponſum erat, non tantam eſſe auctoritatem, ut aut rationem vincere poſſit, aut legem. Etenim nulla conſuetudo tam fortis & tam ſæpius repetitis actibus radicata eſt, quin lege poſteriori ſcripta, tolli queat.*

When it is moſt adviſable to particularize the Goods inſured in the Policy, or to declare them under the general Term of Merchandize.

§ 11. The Goods to be inſured ſhould be declared in the Policy as circumſtantially as poſſible, if the Particulars are known, by their Marks, Numbers, and Package, rather than under the general Expreſſion of Merchandize: Or if it be agreed to inſert thoſe Particulars when known by the Inſured, they ought by no Means to be omitted, more particularly if the Inſurance be made for the Account of ſeveral Perſons; ſince by this Specification great Trouble is prevented in proving to the Inſurers the particular Goods they inſured, which were more, or leſs ſubject to Damage.

When not.

§ 12. But on Goods expected from Abroad, it is more adviſable to let the Policy be made out under the general Expreſſion of Merchandize, than to inſert Particulars; as Orders for the Purchaſe of foreign Commodities cannot always be ſtrictly complied with by Agents, or Factors, ſince many Circumſtances may vary the Orders given them for purchaſing of particular Goods.

Goods. Beſides, when a Debt may be dubious, Goods taken in Payment, different from thoſe that were ordered, may be ſubſtituted in their Place.

§ 13. Every Perſon making Inſurance under the general Expreſſion of Merchandize, ought not to conceal any Thing he may know to deſerve a greater Premium than is commonly given. And for any Damage happening to Goods more liable to it, than others inſured at a low Premium, the Inſurer ought not to be anſwerable, any farther than in common with the reſt of the Cargo not ſo ſubject to Damage.

Though an Inſurer has ſigned under the general Expreſſion of Merchandize, yet ought he not to make good any Damage proceeding from the Quality of Commodities not ſpecified, in the Contract or Policy, as liable by their Nature to Damage.

§ 14. According to the Laws of ſeveral Places, ſuch things as in their Nature are ſoon corruptible, or periſhable, or contraband Goods, which in Time of War are liable to Confiſcation [*a*], are not to be underſtood under the general Expreſſion of Merchandize; ſince the Inſured is obliged not to conceal any Thing from the Inſurer relating to the Riſk he takes on him. It may nevertheleſs happen that through the unwarrantable Proceedings of others, the Ship may be expoſed to greater Danger than the Inſured may know, or be aware of: In which Caſe the Inſurer, not the Inſured, is accountable for any Loſs or Damage [*b*].

The Ordinances of ſome Countries particularly ſet forth what Sort of Goods ſhall not be inſured under general Expreſſions.

[*a*] The antient Ordinances of Inſurance made at *Amſterdam*, *Middleburg*, and *Rotterdam* allow Corn, Fruits, Wine, Beer, Oil, pickled Herrings, Sugar, Quickſilver, Honey, red Oker, Butter, Cheeſe, Meat, Fiſh, Hops, Syrups, Seeds, or Ammunition, to be comprehended under the general Expreſſion of Merchandize. But in the Ordinances of the Cities of *Rotterdam* (publiſhed in 1721.) and of *Amſterdam* (in 1744.) N°. 249. and 521. only Ammunition, Arms, Gold, Silver and Jewels, are ordered to be declared; and all the other above-recited Goods may be inſured under the general Title of Merchandize: But the Inſurer ſhall not be liable to make good any Damage that ſhall happen to the afore-recited Commodities, under Ten *per Cent.* (N°. 545.) The *French* Ordinance (N°. 669.) only explains in general Terms that the Decay, Waſte, and Loſs happening through the natural Tendency of the Goods to Corruption, ſhall not fall on the Inſurer: And (N°. 693.) that Goods ſubject to Leakage ſhall be expreſſed in the Policy; and if not, the Inſurer ſhall not be anſwerable for Damages befalling them by Tempeſt, [*b*] except the Inſurance be made upon Returns from foreign Countries. The *Pruſſian* Ordinance (N°. 773.) intimates that all Goods ſubject to Corruption, and Leakage, ought to be deſcribed in the Policy. The *Hamburgh* Ordinance (N°. 891.) excepts againſt the following Goods being underſtood under the Expreſſion of Merchandize, *viz.* Salt, Corn, Raiſins, Plumbs, Vitriol, dry Fiſh, Oker, Hemp, Flax, and untarr'd Cordage: By N°. 893. Powder and Lead, Cannon and Ball, Arms, Muſkets and Piſtols, Brimſtone, Salt-Petre, Pitch and Tar; Materials for the Uſe of

of Ships; ſuch as Cordage, Sails, Maſts, and every Thing elſe, which by Powers at War may, or ſhall, be prohibited from being carried to their Enemies. And the *Swediſh* Ordinance (N°. 1035.) enjoins, that if Jewels, Pearls, or any other precious Commodities, coined, and uncoined Gold and Silver, be packed up, in or with other Goods, it ſhall be expreſſed in the Policy; as ſhall alſo all warlike Commodities, diſtinguiſhing them by their Names; and likewiſe all periſhable and leaking Merchandize, mentioned in the preceding Ordinance of *Hamburgh*; unto which were added, Furs, Books, Paper, and Seeds. The *Recopilation* of the *Spaniſh Weſt-Indian* Laws (N°. 106.) declares, That under the general Expreſſion of Goods, are not to be underſtood, Cattle, Slaves, Ships, and Ships Stores, Freights, and Artillery. And moſt of the preceding Particulars we find in the Ordinance publiſhed at *Florence*, *June* 1526, which plainly demonſtrates, that Things were then as maturely conſidered, as now, and the Difference in the Riſk of the Goods inſured as nicely regarded; for this Ordinance (N°. 12.) ſays, "That under the "general Name of Merchandize, ſhall not be underſtood, Slaves, Fruits, "Horſes, Corn, Wines, ſalted Fiſh, Vitriol, Alum, precious Stones, Oils, "Iron Ore, Houſhold Goods, fine wrought or coined Gold and Silver: "And whoever intends to have ſuch Sorts of Goods inſured, ſhall be "obliged to expreſs them in the Policy; or it ſhall *ipſo jure* be of no "Validity." This ſhews that People then foreſaw, as well as we do now, how the Inſurers might be wronged, by not knowing in what Manner, and upon what Sort of Goods they underwrote. Ever ſince the Year 1749, the followed Conditions are inſerted, and printed in the Policies at *London*, viz.

In the Policy of the London Inſurance Company, N°. 1334. } *Corn, Fiſh, Tobacco, Hides,* { *Free from all Average, except general, or the Ship ſtranded. Sugar, Rum, Hemp, and Flax, free from all Average under* 5 per Cent. *unleſs general, or the Ship ſtranded.*
That of private Inſurers - - - *Corn, Fiſh,* - - - -

The Inſurers are not liable to make good a Confiſcation of Gold and Silver at the Places where their Exportation is prohibited; but they are when they are ſeized on ſearching foreign Ships at Sea.

§ 15. Gold and Silver coined and uncoined, Pearls and other Jewels, may be inſured at *London*, *Hamburgh*, and ſeveral other Places, under the general Expreſſion of Merchandize: but as the Exportation of Gold, and Silver, is prohibited in many Countries; it is every where underſtood that the Inſurers are not liable for the Riſk of a clandeſtine Exportation, at the Places where ſuch Prohibitions ſubſiſt. So the Ordinance of *Hamburgh* (N°. 104.) ſays, "If Money, Bars of Silver, Goods, "or Merchandize ſhould be detained, or confiſcated for not "being duly entered at the Cuſtom-houſe, the Inſurers are not "anſwerable for the Loſs; but ſhould any Veſſel at Sea be ſtopped, ſearched, and viſited, either by the *Spaniards*, *Portugueſe*, or the *Engliſh*, in whoſe Dominions the Exportation "of Coin is prohibited, and any found on board ſuch Veſſels, "and taken away; we are of Opinion, that as in Time of "Peace,

" Peace, and in *Mare libero*, thoſe Nations have no Right to " make ſuch a Search, the Inſurers are anſwerable for ſuch Re- " ſtraint, and Breach of Treaties.

§ 16. Any one who has laden different Sorts of Goods, and intends to run Part of the Riſk himſelf, or to have them inſured at different Places, hath it in his Option, which of thoſe Goods he will have inſerted in ſuch, or ſuch a Policy, and may chuſe from amongſt them ſuch Sorts or Parcels for himſelf, as are leaſt expoſed to Average: But then this Choice ought to be made at the Time of taking out the Policies, and the Marks, and Numbers of the Merchandize be therein diſtinguiſhed: For if an Inſurance has at the Beginning been made under the general Expreſſion of Goods, and ſome Time after the Inſured wants to have it expreſſed in the Policy, as is frequently the Caſe, that the Riſk is to run on ſuch or ſuch Bales, we think the Inſurer has a Right to enquire into the Cauſe of this Specification, and particularly into the Quality, and Condition of the Goods: Since as long as they continued inſured under the general Expreſſion of Merchandize, and there happened to be on board others of a greater Value, a joint Obligation ſubſiſted among the Inſurers: And none concerned therein ought to be prejudiced by ſeparating or dividing ſuch Goods. An equal Obligation may indeed more properly be ſaid to ſubſiſt amongſt ſuch of the Inſurers as had underwrote for the Value of ſuch Goods as were brought aboard at one Time, and who previous thereto had underwrote a Policy; for it is certain, that if the Ship wherein theſe Goods were loaded as To-day, ſhould be burnt at Night, none would inſure them To-morrow: The Riſk of the Inſurers who firſt underwrote ſhould not therefore be confounded with that which Inſurers of a later Date muſt run, eſpecially at thoſe Places, where they anſwer for the Riſks the Goods run while they are aboard the Lighters in their Paſſage to the Ship; and only thoſe Inſurers who ſigned the firſt Policy, ſhould jointly run the Riſk on the Goods in the firſt Lighter, and ſo on, according to the Value. For Inſtance, *A* at *Hamburgh* cauſes, *July* 1, his Broker *B* to get a Policy of Ten Thouſand Marks made out on Goods to be laden on board the *Conſtantia* for *Cadiz*; and *July* the eighth another likewiſe for the ſame Sum by the Broker *C*. It happened that the firſt Lighter bound aboard with Goods to the Value of Six Thouſand Marks, on

Any one who loads Goods, and runs Part of the Riſk himſelf, or inſures them at different Places, may chuſe what Goods he will have inſerted in each Policy, and which he will reſerve for himſelf.

July the Ninth was loſt, which, according to the Law of *Hamburgh* [*a*] muſt fall proportionably upon all the Inſurers, who had ſigned the firſt Policy, thoſe on the ſecond contributing nothing to it: now ſhould all theſe Goods, which were intended to have been ſhipped, have been for Account of a Perſon living at *Cadiz*, and he had made his Inſurance there; then according to the *Spaniſh* Law [*b*] thoſe who had firſt underwrote to the Amount of Six Thouſand Marks muſt alone have paid it, and all the other Inſurers contributed nothing. In *England* the Inſurer's Riſk does not commence till Goods are aboard the Ship: the Accidents therefore which they are expoſed to in the Lighters do not concern them. Nevertheleſs a Difference ought to be made between Inſurers who have underwrote under ſeveral Dates; for ſuppoſe a Perſon had Goods to ſhip to the Value of Two Thouſand Pounds: On *June* the 1ſt he ſent aboard Ten Bales marked M, N°. 1 to 10, which coſt One Thouſand Pounds; and on that Day he had Inſurance done to that Value under the general Expreſſion of Merchandize. On *June* the Fifteenth he ſhipped Ten Bales more, M, N°. 11 to 20, to the Value alſo of a Thouſand Pounds, and cauſed a like Inſurance to be made: Now on the Bales 11 to 20 (perhaps from coming laſt aboard, and being ſtowed in a Place ſubject to Damage) ſome Average was found at their unloading; why ſhould the Inſurers, who moſt evidently till the Fifteenth of *June* run their Riſk ſolely and ſeparately on N°. 1 to 10, have any Thing to do with what happened to N°. 11 to 20, ſhipt afterwards? Hence we hope it may be allowed us to remark, that although it has always been a general Cuſtom in *London*, to bring all the Inſurers, who have ſigned at ſeparate Times for the Account of one and the ſame Perſon, under the general Expreſſion of Merchandize, into one common Riſk or Average; yet ſuch a Cuſtom ought to be laid aſide, as it is palpably not founded in Equity, conſidering the remarkable Difference there may be in the Beginning, and Duration of the Riſk, by Goods being ſooner or later ſhipped and inſured. But with reſpect to Goods from Abroad, the particular Time of their having been ſhipped can very ſeldom be known; and therefore an Inſurer would deſerve very little Eſteem, who, inſtead of making Satisfaction for Damages, ſhould pretend to demand of the Inſured, in ſuch Caſe, what

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it is hardly poſſible for him to know. No Inſurer ought to refuſe, when demanded, to admit a particular Explanation of Goods inſured under the general Expreſſion of Merchandize, when ſuch Explanation is done only for the better underſtanding, or determining the Riſk, and with no ill Deſign. We muſt here obſerve, that when Inſurance upon the ſelf-ſame Goods is made at different Places, it is very material to know the Difference of the Laws and Cuſtoms in Force at thoſe Parts, in order to make the proper Explanations in each Policy.

[*a*] The Ordinance of *Hamburgh*, N°. 918; of *Middleburg*, N°. 188; of *Amſterdam*, N°. 535; of *Rotterdam*, N°. 269; of *France*, N°. 686; of *Stockholm*, N°. 1075; all agree that ſo many Inſurers as have ſigned upon one and the ſame Policy, ſhall contribute Share and Share alike, and that the Policy firſt made out and begun, is firſt to ſtand good.

[*b*] But according to the *Recopilation de las Leyes de Indias*, in *Spain*, N°. 85; the Ordinance of *Antwerp*, N°. 69; Statutes of *Genoa*, N° 149; thoſe Inſurances firſt take Place, which appear by their Dates to have been firſt ſigned. However the above *Recopilation*, N°. 124, ſays, "That in Caſes where by ſeveral Policies a joint Riſk is run on Goods "laden in a Ship named; and ſuch Goods have been taken out, du- "ring the Voyage, and diſtributed, or forwarded, in more Ships; all "the Inſurers anſwer the Risk they have reſpectively engaged for; and "the firſt and laſt equally ſhare the Profit, or bear the Loſs."
The *Koningsberg* Ordinance, N°. 789, ſays, that when Goods are unloaded, and put into ſeveral Veſſels, all Damages ſhall be borne by every one of the Inſurers without Diſtinction, whether engaged in the firſt, or the laſt Policies, in Proportion to the Sums underwrote by each. Hence it plainly appears, that all the Ordinances on this Subject ſtand in Need of farther Explanations.

Inſurance on Ship, or Ships.

§ 17. When Merchandizes are ſent to diſtant Parts, from whence no Letters can regularly come, and it cannot therefore be certainly known, in what Species, or in what Ships, the Returns will be made; it is cuſtomary to inſure on Goods, in any Ship, or Ships [*a*] expected, or that may come from thence. Thus the Policies from *La Vera Cruz* to *Cadiz* often mention no more than the Inſurance being made on Goods, or Money to be ſhipp'd by *A*, a Factor at the former Place, to the Conſignment of *B* at the latter. But this is leaving too much Room for Fraud: For the Shippers at *Cadiz* commonly join the Goods of ſeveral of their Friends in one Invoice, which they give the Factor who goes to the *Weſt-Indies:* and although the Regiſter may ſhew that Goods, or Money came from *A* at *Vera Cruz*, to the Conſignment of *B* at *Cadiz*, it does not fix

for whoſe Account theſe Goods are, and for whom purchaſed: So that the Proof of the Property of the Effects muſt reſt ſolely on *B*'s Affidavit. The People at *Cadiz*, indeed, when they join ſeveral of their Friends Goods in one Invoice, commonly diſtinguiſh them therein by particular Marks; and order the Factor, when he ſends any Returns, to explain in the Regiſter how much belongs to each Mark: But as this is not always ſtrictly obſerved, Inſurers, when Policies are offered upon uncertain Returns, ought not to let the Riſk reſt upon ſuch a general Explication, as that of *coming under Regiſter from* A *to* B *for ſuch a Mark's Account*; but to inſiſt on being informed, before they underwrite, or by Return of the Poſt, what theſe Returns are the Produce of. As for Inſtance, a Policy might be filled up in the Manner following, *viz. On Money or Goods expected in any Ship or Ships, for the Proceed of an hundred Pieces of Cloth, which in* Spain *contained three thouſand one hundred Varas, and in Value amounted to twenty-four thouſand Rials of Plate, ſent out in five Bales* NM, N°. 1 *to* 5, *under the Care of* Don Juan Alfonſo, or *for the Proceeds of ſuch Things, as are explained in a ſealed-up Declaration depoſited in the Office.* By thus knowing as much as the Inſured himſelf, the Inſurers are as little expoſed to Fraud, by ſigning on a Ship or Ships not named, as if they were named; and by ſeeing what Orders were given, and why they were not executed, they are enabled to come at the Truth: For if they doubt of what is communicated to them, they know what Enquiries to make on the Spot. And as to the Ships which can be expected, it is commonly known in what Condition they were, when they went out; how long they have been kept abroad, and are likely ſtill to remain there. That the Inſurers might not be obliged for too long a Detention, it has of late been wiſely introduced, in *London*, to make it a Condition in ſome Policies, not to run the Riſk but only on Goods that ſhall be, or may have been ſhipped, on or before ſuch a Date; that is, within a Year or two.

[*a*] It is ordered in the *Recopilation de Leyes de las Indias*, N°. 87, That Policies of Inſurance on Returns in a Ship, or Ships named or not named, ſhall, after the Expiration of two Years, be deemed to be no longer of Validity: But this Cuſtom is become obſolete, and is now diſregarded at *Cadiz*. And according to N°. 89, any Sum that has been already inſured on thoſe Effects ſhall be expreſſed in ſuch Policies. N°. 96, enjoins that the actual Load-

Loading ſhall be proved by the King's Regiſter: And N°. 102, That the Inſurers ſhall not be liable to make good Damages, in caſe the Policy doth not agree with the ſaid Regiſter.

The Ordinance of *France*, N°. 666, ſays, "Goods loaded for *Europe* from "the Ports of the *Levant*, the Coaſts of *Africa*, and other Parts of the "World, may be inſured upon any Ship whatſoever, without naming ei- "ther the Maſter or the Ship (which at *Marſeilles* they term *In quo vis*) "provided the Name of the Perſon to whom they are conſigned, be ex- "preſſed in the Policy." And purſuant to the late Ordinance of *Rotterdam*, N°. 279, the Name of him that orders the Inſurance, with the Date of the Order, or the Letter of Advice, ſhall be ſet forth in the Policy, in caſe the Name of the Ship be unknown.

Limitations in different Parts concerning the Inſurance of Freights.

§ 18. Some Laws prohibit the comprehending in the Inſurance of Ships, any of their Rigging or Tackle, as being ſubject to be worn out, or their Proviſions, or Ammunition, becauſe of their conſtant Conſumption [*a*]. The inſuring of Freights is allowed by the Laws of ſome States, and forbid by thoſe of others [*b*]. But, in our Opinion, a Medium in this Affair would be beſt; that is, proper Diſtinctions ought to be made. With regard to Ships that are intended for earning Freights, Care ſhould be taken that the Freight, and the Expences of their fitting-out, be not both inſured, or a double Inſurance made. But an abſolute Prohibition to inſure, under the one or the other Title, muſt certainly be inconvenient for Trade, becauſe there are Undertakings for remote Voyages and Expeditions, where the Expences of fitting-out the Ship, or her Freight, by far ſurpaſs the Value of the Ship itſelf; and if the inſuring them were not permitted, it would prevent the Extenſion of Trade, and thwart many important Enterprizes. The View in making ſuch Limitations could only have been to hinder any one from premeditately expoſing a Ship and Cargo to Danger, in Hopes of becoming a greater Gainer by their Loſs or Damage, than by their ſafe Arrival at their deſtined Port. But as it cannot be very difficult for any Inſurer, Judge, or Arbitrator, that may be appointed to regulate Damages, to diſtinguiſh in what State or Condition the Thing was, at the Time of its Inſurance; and he can reaſonably gueſs, what it could be when the Ship arrived; there does not ſeem to be any Neceſſity for a legal Reſtriction of inſuring in either Caſe: For it will be eaſy to aſcertain, in Caſes of Inſurance, from the Charges of fitting a Ship out, what Allowances muſt be made for Wear and Tear, and what may be conſumed in the ordinary

dinary Courſe of the Voyage, over and above what the Freight may bring in; and, if this is inſured, what ought to be deducted for Men's Wages unpaid, and Proviſions unconſumed: which is what has been lately introduced in *London*, under the Expreſſion of *neat Freight*; though we believe it is not yet univerſally underſtood, as may appear by a Caſe, which occurs to us of an Inſurance made in *London*, with the above Clauſes. Both Ship and Cargo were entirely loſt; and the Inſured inſiſted on recovering the full Freight according to Bills of Lading, deducting only thoſe Wages, and Port Charges, the Ship muſt have paid if ſhe had arrived in Safety. This is conformable to what the *Amſterdam* Ordinance, N°. 526, ſays, *viz.* "That "Freight and the ordinary Charges, uſually called common "Average (deducting Mens Wages, and other Charges that "muſt have been paid out of it, if the Ship had arrived) may "be inſured, and recovered ſo far as it can be proved that the "Gain, or Overplus from the Voyage, would have amounted "to." To which we think might have been added, "de-"ducting alſo the Port Charges, *&c.* outwards, and for "Wear and Tear." What properly ought to be underſtood by neat Freight, or what can be called the Gain, or the Overplus of a Voyage, the Reader will perceive by the following Example:

	l.	*s.*
Suppoſe a new-built Ship at *London* with all her Apparel to coſt - - - - -	2000	
Six Months Proviſions for 12 Men (on a Voyage for *Cadiz*) at 8 *d. per* Day, is 12 *l.* a Month, or 30 Days - - - - -	72	
Two Months Wages advanced the Men at 22 *l.* is - - - - - - -	44	
River Charges, in her outward-bound Voyage, in all - - - - - -	24	
	2140	
Premium of Inſurance from *London* to *Cadiz*, on the Ship valued at 2223 *l.* 3 *s.* at 1 $\frac{1}{4}$ *per Cent.* - - - - - -	27	16
	2167	16

For

	l.	*s.*
For which 2223 *l.* 3 *s.* is paid on the Ship's Loſs, at 98 *per Cent.* - -	2178	13
Deducting $\frac{1}{2}$ *per Cent.* Commiſſion	10	17
	2167	16

So that the Inſured loſes nothing of his Principal, or firſt Coſt, ſuppoſing the Ship to be loſt. Let us now ſuppoſe that 300 *l.* was inſured upon the neat Freight; and that it was proved by the Bills of Lading that the Ship made Freight to *Cadiz*

- - - - - - *Dollars* 2000

The Query will be, what could be recovered? And in order to form a Reply, the ſubſequent Deductions muſt be made, *viz.*

	Dollars.	
$\frac{1}{3}$ of the inward Port Charges and Pilotage, called the common Average, ſuppoſed to be 200 Dollars	66 $\frac{2}{3}$	
One Month's Wages 22 *l.* is at 6 *dol. per* Pound Ster. - - - - - -	132	
A ſmall Matter for Wear and Tear of the Ship - - - - - - - -		
		198 $\frac{2}{3}$
	Dollars	1801 $\frac{1}{3}$
At 6 Dollars for a Pound Sterling, is - -		*ſ.* 300 $\frac{4}{18}$

Now if all the outward-bound Charges were comprehended in the above Valuation of the Ship inſured, as is commonly done, then there ought to be a further Deduction of half the Proviſions conſumed, 36 *l.* 44 *l.* 24 *l.* 27 *l.* 16 *s.* and the Premium of 300 *l.* inſured on the Freight, 3 *l.* 15 *s.* in all 135 *l.* 11 *s.* from the Freight as above: So that in Strictneſs the neat Profit of the Voyage, and what ought to be recovered for the 300 *l.* inſured upon the Freight, does not exceed 164 *l.* 9 *s.*

[*a*] The *Recopilacion de las Leyes de Indias*, in *Spain*, only permits two Thirds of the Ship to be inſured upon her going to the *Indies*, and no Freight, Artillery, or Ship's Utenſils; leaving the *Conſulado*, or Court of Judicature, to fix it, in the homeward-bound Voyage; but of late this

this has not been obſerved, and People at *Cadiz* inſure what they pleaſe; nay, Inſurances *por via de Apuesta*, that is, by Way of Wager, or Intereſt or no Intereſt, are alſo introduced there. By *Philip* the Second's Ordinance of *Antwerp*, Anno 1563, N°. 57, the inſuring above half the Ship's Value was prohibited, if ſhe was in Ballaſt, or but half loaded: Yet if above half the Cargo was aboard, her full Value, with the Artillery and Ammunition, might be inſured; but not the Rigging.

The Ordinance of *Middleburg*, of 1689, forbids Inſurances to be made on Ships for above half their Value, or upon the Ammunition and Proviſions that are conſumed. N°. 167.

[*b*] By the *Rotterdam* Ordinance of 1721, N°. 239, Seven Eighths of a Ship's Value may be inſured; and by N°. 234, the Freight.

The *Amſterdam* Ordinance of 1744, N°. 518, permits Inſurances to be made on the Body of the Ship, with all its Rigging, Anchors, Cables, Sails, Ammunition, Proviſions, and Premium of Inſurance; N°. 526, on the Freight.

The *French* Ordinance, N°. 610 and 681; and the *Koningsberg*, N°. 781, allow Nine Tenths of the Value of the Ship, Rigging, Tackle, Ammunition and Proviſions, to be inſured; but Freight, as by N°. 677 and 780.

The Ordinance of *Hamburgh*, N°. 881; and that of *Stockholm*, N°. 1024, permit to inſure in full the Value of the Ship, with all her Appurtenances, Charges of Outſet, and Premium of Inſurance; and N°. 881 and 1023, the Freight.

Sailors Wages not to be inſured.

§ 19. Almoſt all Ordinances forbid the inſuring Seamens Wages: And the Reaſon is, that their own Intereſt may lead them to do all they can for the Ship's Preſervation. Sailors hired at *London* for a Voyage to the Streights, are commonly articled to perform it out and home. By this Covenant it is ſtipulated, that they ſhall have one or two Months Pay advanced; which Money ſo advanced, is by Cuſtom, and Law, admitted to make a Part of the Outſet; and may be inſured by the Owners who advance it, but by no Body elſe. We cannot omit obſerving, that it is good Policy in a Country like *Great-Britain*, where ſo powerful a Navy, and ſuch a great Number of Seamen, muſt neceſſarily be kept up, that Sailors ſhould have an Intereſt in coming back, and ſpending their Earnings at home. Accordingly it is wiſely enacted by 8 *Geo.* I. *cap.* xxiv. *ſect.* 7, "That no Maſter, or Owner, of any Merchant "Ship ſhall pay to any Seaman, beyond the Seas, any Mo- "ney or Effects on account of Wages, exceeding one Moiety "of the Wages due at the Time of ſuch Payment, till ſuch "Ship ſhall return to *Great-Britain, Ireland*, &c." When we ſaid above that no Inſurance can be made on Seamens Wages, we would be underſtood to mean, on ſuch Wages as

are

are not due till the Voyage be entirely finiſhed: But if they engage to go a long one, and covenant to have ſome Money paid them abroad to lay out in Goods to bring home, Inſurance may be made on ſuch Goods [*b*].

[*a*] Ordinance of *Amſterdam*, N°. 518.
of *Rotterdam*, N°. 234.
of *Stockholm*, N°. 1024.

[*b*] Ordinance of *Hamburgh*, N°. 780. } Agree that Seamen may get Inſu-
of *Amſterdam*, N°. 524. } rance done upon Goods, which they carry out with them; from whence it follows, that if Money is due to them abroad for Wages, they may receive and lay it out as they pleaſe.

Inſurance may be made on Money lent on Bottomry, &c.

§ 20. Inſurance is every where allowed to be made on Money lent on Bottomry, that is (as was before obſerved) on the Keel, or Bottom of a Ship; or on certain Goods ſpecified, and ſhipped on ſuch a Bottom, (which we underſtand by the Term *reſpondentia*) and for which Money uſually a Bond is given by the Borrower, wherein are ſet forth the Conditions of the Loan, and what Premium is paid for it. This Premium is ſomething more than the common Intereſt of Money, with the Addition of a Premium of Inſurance. In conſideration of it the Lender takes on him the Sea-riſk of the Ship, or Goods, on which he lent his Money, and ſo is in fact an Inſurer to the Borrower: And if he cauſes himſelf to be inſured, it is to be conſidered as a Re-Inſurance. The Inſurers muſt be governed, in theſe Caſes, by the uſual Cuſtom of ſuch Contracts in the Countries where they are made, which greatly differ.

Inſurances on Bottomry, when, and where, free from groſs Average.

§ 21. The Ordinance of Inſurance made at *Amſterdam* in 1744 (N°. 532) ſays, That Inſurance on Bottomry is free from groſs Average, and alſo from Damage on Goods proceeding from their own Quality or Defects.

The Ordinance of *Hamburgh* (N°. 931) ſays, That whoever inſures on Bottomry, is free of all Average, having nothing to contribute to it. The judicious *Adrian Verwer*, Merchant at *Amſterdam*, who wrote in 1711, upon the Sea Laws, and Bottomry, gives us (Page 177) a Declaration ſigned the 17th of *September*, 1699, by ſeveral of the moſt eminent Merchants of that City, in the following Words, *viz.* "We the underwritten "Merchants declare, That to our Knowledge, it has been the "conſtant Cuſtom of this Place, in Affairs of Bottomry, either "concluded, or to be paid here, to determine, 1. That the

" Lender on Bottomry is not obliged to contribute to any groſs " Average. 2. That although the Goods pledged ſhould by " any Misfortune be diminiſhed, but ſtill yield more than the " Sum pledged for, the Lender is to receive his full Money; " in which Senſe, this Tranſaction has always been under- " ſtood here; wherefore if the Borrower would have any " Thing ſtipulated to the contrary, it muſt be made a Condi- " tion by expreſs Words in his Bond; otherwiſe the Practice " is, as we have before declared; and we certify it to have " been ſo ever ſince our engaging in Trade: And by Tradition " have learnt that it was the ſame in former Times: This is " what we have practiſed in our own Tranſactions; and we " have never ſeen a contrary Uſage." Nevertheleſs the new Ordinance of *Amſterdam*, with the Note, or Clauſe to make the Inſurers free only from Damage proceeding from the periſhable Quality of the Goods, ſeems to differ from the foregoing Declaration. We find in the old Statutes of *Hamburgh*, of 1603, *Tit.* xviii. *Art.* 6, that no Average is to be paid for Bottomry: But the Meaning, we preſume, can only have been, *no groſs Average*, becauſe the preceding *Tit.* xvi. and xvii. treat ſolely of Goods thrown overboard; what in Caſes of Stranding is to be firſt ſaved; how the People that aſſiſt are to be rewarded; and how the Damages of Ships running againſt one another ought to be regulated: All which relates to the Doctrine of groſs Averages. At a Meeting of the Deputies of the *Hanſe Towns* in *Lubeck*, 1591, ſome Sea Laws were made, (from whence the aforeſaid *Hamburgh* Statute of 1603 ſeems moſtly to be taken) in which *Art.* 56. *Of Bottomry*, mentions, That if any Perſon concerned in fitting-out a Ship ſhall refuſe his Conſent to a Voyage agreed on by a Majority of her Owners, and deny paying for his Share of her Outfet; the Maſter ſhall have Power to borrow Money on ſuch Share, and pay the Principal, and Premium, out of it (without Prejudice to any other Owner) ſo far as the Share the ſaid Perſon has in the Ship will ſatisfy; that is, he who was the Cauſe of the Expence ſhall make it good out of his private Property. It ſeems as if the Merchants of *Hamburgh* were not at that Time very converſant in nſurances: They knew that Maſters of Ships, when they took any Share in them, uſed to borrow Money on Bottomry; wherefore in the Statutes abovementioned, of 1603,

Tit.

Tit. xviii. *Art.* 1. it is enacted, That no Maſter ſhall take more Money on Bottomry, than what his own Share will anſwer, at the Place where his Owners reſided; and that whoſoever advances him more, than what his Property will ſatisfy, ſhall have no Redreſs but againſt his Perſon and Effects, without any Claim on the other Owners. Nevertheleſs a Maſter was permitted, when in foreign Parts, and under Diſtreſs, without Credit, or Acquaintance, to take up Money on Bottomry both on Ship and Cargo, for ſupplying what his Wants might require, either for refitting, or victualling his Ship, on which both the Safety and Succeſs of his Voyage might entirely depend; which being for the mutual Benefit of all concerned, they are by the ſaid Act mutually bound for: And the Captain agreeing that the Loan ſhould be free from Average by any future Accidents, would naturally obtain it on eaſier Terms, than he otherwiſe could have done; which Circumſtance probably gave Riſe to the Notion prevailing in *Holland*, and *Hamburgh*, that all Loans on Bottomry ſhould be free from Average: Beſides, we apprehend it was not then cuſtomary to carry on a Trade in Goods by borrowing Money on Bottomry, or *Reſpondentia*, inaſmuch as the Borrower, in order not to be ruined in caſe of an Average, would (beſides paying a Bottomry Premium) be obliged to pay another of Inſurance for Averages only.

As Bottomry Bills from *Curaçoa* and *St. Euſtathia* commonly expreſs to pay within Days after their Arrival at *Amſterdam*, 48 Stivers current Money for each Dollar received there, it may not be improper to inform our Readers of the juſt Value of the nominal Dollar of thoſe Iſlands at *London*.

A Thouſand heavy *Spaniſh* Dollars paſs in thoſe Iſlands for 1250 Dollars; and when Invoices of Goods coming from thence are expreſſed in Dollars, to reduce them to *Spaniſh* Dollars 25 *per Cent.* muſt be deducted from the former. Now 10,000 effective *Spaniſh* Pieces of Eight, worth 12500 Pieces at *St. Euſtathia*, being ſent by Governor *Heiliger* to *England* in 1753, produced, after a Deduction of 2 *per Cent.* Freight, and one *per Cent.* Commiſſion, 2299 *l.* neat at *London:* The nominal Dollar at *St. Euſtathia* is therefore equal to 3 *s.* 8 *d.* Sterling, Premium included. Whence it appears, that when 48 Stivers is required at *Amſterdam* for a Dollar, ſome Profit on lending the Money on Bottomry is included; which, in our Opinion, cannot be recovered from the Inſurers, unleſs they agreed to the Valuation of the Dollar at 48 Stivers, or 4 $\frac{4}{11}$ Shillings Sterling, in the Policy. But to admit a Valuation above 3 *s.* 8 *d.* to 4 *s.* Premium included, is dangerous for the Inſurers.

Merchants in *Holland* and *Hamburgh*, where the Laws relating to Bottomry are deficient, and differ from thoſe of other Countries, when they

make Inſurances on Bottomry, ought to weigh their own Caſe, and explain in their Bond and Policies how they will have it underſtood.

The Lenders of Money on Bottomry ſhall contribute to the eaſing thoſe who take it in the groſs Averages.

§ 22. The *French* Ordinance of 1681, in the 30th *Section*, treats of Bottomry with the greateſt Perſpicuity. It ſays, (N°. 660) That thoſe who lend Money on Bottomry ſhall bear their Proportion, for the Sum ſo lent, of all groſs, or general Averages; ſuch as Redemptions, Compoſitions, Jettiſons, and Maſts and Rigging cut away for the common Safety of the Ship, and Goods; but not for a ſimple Average, or particular Damages that may happen, except there be ſome Agreement for that Effect. And, N°. 654, it ſays, "That Cre-"ditors for Money formerly due on ſuch Accounts, ſhall not "come in Competition with thoſe, who have actually lent it "for the laſt Voyage."

The Obligation of Bottomry Bonds, beſt expreſſed in *Spain*.

§ 23. This Branch of Buſineſs, as appears by the Forms of the Bottomry Bonds annexed to the Ordinances N°. 132, 133, is beſt underſtood in *Spain*. The great Sums that are required to fit out a Ship for the *Spaniſh Weſt-Indies*, and for obtaining a Licence from Court to go with Regiſter, render it neceſſary to borrow Money on Bottomry in almoſt every ſuch Expedition; and the Variation of many Circumſtances which occur, teaches their Notaries to provide, in their Contracts, for Things that People in other Countries do not think of. We find in the Bond, N°. 132, this Condition expreſſed, that the Lender ſhall run, in Partnerſhip with the Owner, *el Rieſgo del Caſco, la Quilla, y de los Aprovechamientos del Navio*, that is, "the "Riſk on the Hull, Keel, and Earnings of the Ship;" which is ſaying a great deal in few Words. The following Inſtance will illuſtrate this. One of theſe Ships for the *Weſt-Indies*, with all her Tackle and Stores, may coſt 40000 Dollars; and perhaps the Licence, Proviſions, and Caſh advanced to the Sailors, may amount to 60000 Dollars more; all which muſt be reimburſed by the Freight. Suppoſe ſuch a Ship, bound for *La Vera Cruz*, had the Misfortune to be ſtranded at the *Canaries*; the whole Cargo, Proviſions, Ammunition, ſome Tackle and Stores ſaved, but the Ship condemned as unfit to proceed. In this Caſe, the Lender of Money on Bottomry, *on the Hull, Keel, and Earnings of the Ship*, would not only be entitled to a Proportion of the Salvage of the Stores, and Proviſions, but alſo

alſo to a *pro rata* of the Value of the Licence, which might be given to another Veſſel, to carry the Things ſaved to the Place for which they were primarily deſigned. What that Proportion ought to be, would be difficult to any other, than a *Spaniard* expert in theſe Calculations, and Navigation, to determine; for the Queſtion would turn, on what would have been the neat Earnings, Gain, or Freight of the Ship condemned? And the Knowledge of the Coſt of Ship, Licence, *&c.* would not be ſufficient, becauſe her Owner, out of the Salvage of the Licence and Proviſions, ought to receive proportionably to the the Coſt of his Ship, and what her Earnings would have yielded neat (if ſhe had arrived ſafe at her deſtined Port) more than what he took upon Bottomry, or had inſured thereupon; or what the whole ſtood him in. Hence it appears, that although ſuch a Ship may have been inſured, and valued in a Policy, yet when the Loſs is not total, the Valuation ſhould be ſtrictly enquired into: For we are of Opinion that the Inſurers, if the Veſſel's Loſs be not total, have certainly a Right to claim their Proportion of Salvage, under whatever Name it may have been diſguiſed. The following Caſe will, we apprehend, fully prove our Aſſertion. A *Spaniſh* Regiſter-Ship was condemned not long ago, at the *Canaries*, as unfit to purſue her Voyage: Her Cargo was all ſaved; and the *Spaniards* concerned in her allowed the *Engliſh* Underwriters the Benefit of the Salvage of her Regiſter, *&c.* though they had engaged on the Terms of *Intereſt or no Intereſt*; only charging them with what was really loſt of the Ship. We ſhall add by Way of Remark, that the *Spaniſh* Bottomry Bonds are directly inconſiſtent, in a very eſſential Point, with the Views either of the Borrower or Lender; for they declare (N°. 132) that the Riſk ſhall end in Twenty-four Hours after the Ship's Arrival. Now it is impoſſible to unload her in ſo ſhort a Time; and till ſhe is diſcharged, neither the Freight, nor Earnings, on which the Lender in Part runs the Riſk, and out of which the Borrower could only have wherewith to pay, can be ſaid to be out of Danger. Therefore Bottomry-Bonds, and all Policies of Inſurance made upon Ship and Freight, ſhould ſpecify the Riſk not to end till a certain Number of Days after Arrival; and when upon Goods, not till after they are ſafely landed. It is likewiſe a Law in *Spain*, that whoever furniſhed the Money *para el ultimo Avio*, that is, thoſe who

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can make it appear that the Ship could not have proceeded on her Voyage without receiving this laſt Money, has a Right againſt the Ship to recover, preferable to all other Bottomry-Creditors: Nor can any Thing be more reaſonable, ſince for Want of this laſt Loan, or Aſſiſtance, their joint Pledge, which is the Ship, *&c.* might have lain and rotted, or they muſt have raiſed the Money amongſt them. Nevertheleſs it is not enough to declare, or expreſs in the Bottomry-Bond, *to be for Money lent for her laſt ſitting-out*, becauſe all Bonds may contain that Particular; but it muſt be proved before the *Conſulado*, or Court of Judicature, that in fact it was ſo lent, and given under the Sanction and Cognizance of the Court.

Bottomry Contracts how underſtood in *England.*

§ 24. Bottomry Contracts have every where been made Uſe of, long before Inſurances. They were well underſtood in *England* in 1622, when *Gerard Malynes*, an expert and learned Merchant, wrote his *Lex Mercatoria*. In *Chap.* XXXI, he explains it to be a Contract jointly of Intereſt and Inſurance, " for Money ſo taken up by the Maſter on the Ship, when " he is in great Neceſſity: And it may be alſo for Conveniency " Sake, both of a Borrower and Lender, to pledge Merchan- " dize embarked. As for Example; the Lender knows that " ſuch a Merchant doth deal for *Turky*, and that in known Ships " trafficking that Way; the Deliverer of Money goeth unto " him, and maketh an Offer to lend him 1000 *l.* for a Voy- " age to be made (with Kerſies and Tin) to *Tripoli*, and that " he will bear the Adventure of that Money, during all the " Voyage, which he knoweth is commonly performed within " the Year; for (ſaith he) you know that I am an Aſſurer, " and you do uſe to aſſure your Goods; and to increaſe your " Trade, you take up Monies at Uſe of others in ſmaller Sums; " it may therefore be very commodious for us both, to include " the Price of Aſſurance, and the Uſe of Money together. " Hereupon a Contract is made between them: Ten in the " Hundred is accounted for the Uſe-Money, and Ten in the " Hundred for the Adventure of the Goods outwards, and ano- " ther Ten in the Hundred for the Adventure of the Return " homewards; in Concluſion there is Thirty *per Cent.* ſo that " upon Return of the ſaid Ship he is to have 1300 *l.* within " ſuch a Time. This is a good Bargain for the Lender, how- " ſoever the Borrower of the Money may ſpeed; for the " Lender

" Lender hath not to do with the Sale of the Goods, nor " with the Return of them, but he will be ſure that (at the " Return of the Ship) he may have his Money paid him, not " only by the Provenue (or Produce) of the Kerſies and Tin, " bought with the 1000*l.* lent, but alſo with the Return of " all other Goods which the Borrower did lade more in the " ſaid Ship for *Tripoli* as aforeſaid, and in like Manner for " other Places." *Malynes*, however, ſeems to us not to have conſidered in what Manner the Lender (who he ſays is the Inſurer) ſhould be dealt with, in caſe the Kerſies had been damaged in the outward-bound Voyage. Or ſuppoſe the Borrower had nothing elſe aboard but thoſe Kerſies and Tin, and the Perſon who bought them at *Tripoli* did not pay for them, ſo that no Returns were brought from thence in the Ship; *Malynes* has not mentioned, that the Borrower (as he ſurely ought) ſhould have ſome Abatement of the Ten in the Hundred for the homeward-bound Voyage, in which he had nothing to riſk. We find in *Molloy*, *De jure maritimo*, *Part* ii. *Chap.* 11, a Strength of Reaſoning, with a good deal of Perſpicuity, on Bottomry. In *Sect.* 11, he complains, that " many " Maſters of Ships having inſured, or taken up Monies on " Bottomry, to a greater Amount than the Value of their Adventure, do willfully caſt away, burn, or otherwiſe deſtroy, " the Ships under their Care:" This was made Felony, 16 *Car.* II. *cap.* vi. *ſect.* 12. He mentions alſo, " that Monies " advanced are upon two Securities; the one on the bare Ship, " the other on the Perſon of the Borrower; ſometimes upon " both: The firſt is where a Man takes up Monies, and " obliges himſelf, if ſuch a Ship ſhall arrive at ſuch a Port, " then to repay (perhaps) double the Sum lent." Herein this Writer is likewiſe deficient, not having conſidered, or ſaid one Word, how it was to be in Caſe of Average. *Sect.* 13, he treats of Money borrowed upon a fictitious Suppoſition, which Cuſtom, he ſays, " came from the *Italians*, and was more unconſcionable; " and though the ſame is, as to internal Right, unjuſt, yet it " is daily practiſed; and it was not long ſince adjudged * that " ſuch a Contract was good, according to the common Law of " this Realm, and that on a ſpecial Verdict."

* C. B. Hill. 22, 23. *Car.* II.

The Contracts, or Bottomry-Bonds, were generally ſuch, as we exhibit a Form of, in the annexed Collection of Ordinances,

N°.

19 *Geo.* II. *cap.* 37. p. 569.

N°. 1335, and were frequently made uſe of till 1746 †, when the Act of Parliament (N°. 1298) paſſed, enacting that Money on Bottomry, or *Reſpondentia*, ſhall be lent only on the Ship, or the Merchandizes laden on board her. All other Books that we have ſeen publiſhed ſince thoſe abovementioned, are chiefly copied from them; and although moſt of them have made Additions, and enlarged on the Subject, yet they are ſtill greatly defective, in not having cleared up one of the main Points, *viz.* how Lenders ſhall be dealt with in Caſes of Average? Nor are there any Bottomry-Bonds in *Engliſh* ſo well adapted to the Nature of Trade as the *Spaniſh* Forms, N°. 132, 133. As then we have no fixed Laws, or Rules univerſally known, in *England*, for ſettling partial Loſſes on Bottomry-Monies, it is the Buſineſs of the Parties to conſider, what Accidents they are expoſed to, and to have Proviſion made in their Bottomry Bonds, expreſſed in a clear and diſtinct Manner, how they are to be underſtood. For Inſtance: If amongſt ſeveral Partners in a Ship, there ſhould be one, diſſenting from the Reſolutions of a Majority to ſend her on a Voyage, and this Partner will not contribute his Share of her Outſet; it is in this Caſe lawful, in almoſt every Country, for the Maſter to take up Money on Bottomry, to ſupply this Deficiency, if the Owners will not; and to pledge his whole Ship for the Loan; by which all the Concerned are engaged, and liable for the Performance of the Maſter's Promiſe to the Lender; but then if he takes the Money, ſuppoſe on one Eighth Part only of the Ship, it ſhould always be explained in the Bottomry-Bonds, That although the whole Ship be bound to the Lender for the Payment of his Loan, in caſe of her ſafe Arrival, yet he ought to run the Sea-Riſk of that one Eighth, equal with any other Owner, and make good his Part of any Average that may happen, ſince if he inſured, it would coſt him no more than a regular Premium: And farther; as it is an univerſal Law, that a Maſter cannot bottomry his whole Ship at a Place where her Owners reſide, but only a particular Share he may have in her himſelf; it naturally follows from what has been already mentioned, that he ſhould explain in the Bottomry-Bond what Part he holds; for the Lender has no farther Security than ſuch Share, and muſt, in caſe of Inſufficiency, take his Redreſs againſt the perſonal Eſtate of the Maſter, the Borrower.

When

When a Ship in Diſtreſs is forced into any Port, where her Owners have no Correſpondents to ſupply the Maſter with the Money neceſſary to enable him to proſecute his Voyage, he may take it on Bottomry (as has been before obſerved) from thoſe who will advance it on the eaſieſt Terms; and pledge his whole Ship, with her Freight, Tackle, Furniture, and Appurtenances, for the Payment: But it is not ſufficient that the Maſter tell the Lender, and expreſs it in his Bottomry-Bond, that ſuch a Sum was neceſſary; the latter ſhould always (for his own Security, Satisfaction, and Juſtification) have a proper Survey, and Enquiry made, by experienced and impartial Perſons, how far his Allegations were true; and the Reſult of their Perquiſitions ſhould be certified, or atteſted before ſome Magiſtrate, or Juſtice of Peace. Moreover it is highly expedient that thoſe Repairs or Proviſions, which may have been deemed neceſſary, ſhould be certified and atteſted as above to have been made, and ſhipped: For although ſuch particular Steps are not preſcribed by any Law, yet Reaſon dictates that they ſhould be taken; and as the Perſons who aſſiſt a Maſter with Money on Bottomry generally charge a Commiſſion upon it, they are obliged in Honour to ſee Juſtice done to the abſent Owners. For a farther Illuſtration of this Subject the Reader is referred to Caſe 34, N°. P, which happened in *London*, and clearly evinces the Equity of this Doctrine.

§ 25. The Ordinance of *Hamburgh*, (N°. 882) and that of *Amſterdam* (N°. 528) gives Leave to inſure on imaginary Profits: The latter ſays, "That whenever this is done, it ſhall "be mentioned, upon what Goods it is, and the ſame ſhall be "valued in the Policy, and not be ſubject to any Return of "Premium." This Sort of Inſurance uſed formerly at *Hamburgh* to be deemed free of Average, and conſequently could not anſwer the Inſured's Purpoſe, except in Caſes of a total Loſs: But we think that when any Perſon, whoſe Goods promiſe a great Advantage abroad, or their Price has riſen greatly at home, is deſirous to inſure them for more than they coſt, or to inſure their Riſe or Profit; it would be better to omit the Words, *imaginary Profit*, and in their ſtead, to explain what he has ſhipped, by Tale, Weight, or Meaſure; valuing it in the Policy at the Sum he thinks proper. As for Inſtance: A Perſon hath ſhipped an hundred Laſts of

Inſurance permitted on imaginary Profits.

Wheat, which coſt him 6000 Rix-Dollars, and intends to inſure a Riſe or Profit thereon of 33 $\frac{1}{3}$ *per Cent.* he need only agree, and inſert in the Policy, that the ſaid Wheat ſhall be valued at 80 Rix-Dollars *per* Laſt: Which is acting fair and open with the Inſurers, and will alſo anſwer his Purpoſe better; as will be proved when we come to treat particularly of Valuations.

The Ordinance of *Rotterdam* in 1721, N°. 238, ſays, That in caſe Goods be ſent in Return for others, and it happen that the true Value of thoſe Goods ſo ſhipped by way of Return cannot be proved, then the Chamber ſhall ſet a Value on them, not exceeding 50 *per Cent.* more than the Capital ſent out.

The *Middleburg* Ordinance of 1689, N°. 168, permits double the Sum to be inſured homewards from the *Eaſt-Indies*, of what was inſured out.

The Ordinance of *Stockholm*, 1750, N°. 1026, gives Leave to inſure the Value of 50 *per Cent.* more than was ſent out.

The Ordinance of *Copenhagen* of 1746, N°. 1263, agrees with that of *Middleburg* in allowing Inſurances from the *Eaſt-Indies* home, to be double the Value of what was ſent out.

But all theſe Ordinances ſeem defective in not explaining whether the Premiums both out and home are to be reputed Part of the Value or Capital expended, and conſequently be included in it, or not?

And as we much doubt whether the late Expeditions from *Stockholm* and *Copenhagen* have yielded any Thing near ſuch great Gains, as 50, or 100 *per Cent.* the Liberty of inſuring ſo much is precarious. The Method in *England* of valuing in the Policy each Pagoda, or Rupee, laid out in Goods ſhipped from the *Eaſt-Indies*, at a certain Number of Shillings Sterling agreed * on, is much rather to be preferr'd, for if the Goods or Silver ſent out produced a conſiderable Benefit, that Benefit will be found in the Quantity of the *Eaſt-India* Coin; and if it be publickly known (for Inſtance) that a Pagoda employed in Diamonds yields 10 or 11 Shillings Sterling in *England*, the Inſurers will never object againſt ſuch a Valuation of each Pagoda in the Policy.

* *viz.* 9 to 10 Shillings.

Inſurers ſhould be very circumſpect in ſigning Policies on Intereſt or no Intereſt, as this Method

§ 26. When an Inſurance on Intereſt or no Intereſt is propoſed, the Inſurers ought carefully to examine into the Motives that the Perſons inſured may have for thus Inſuring; for it is extremely delicate and dangerous to underwrite to Perſons who have any Management in the Voyage, ſince they may be tempted by Lucre in ſome Shape or other to deſtroy the Ship. Were it

it not for the Apprehenſion of ſuch bad Conſequences, there could be no Objection to allowing Merchants to follow their own Inclinations, and permitting Inſurances, when they cannot otherwiſe be done, to be made as a Wager, or Intereſt or no Intereſt: But ſtill the Inſurers ought to take Care that at the Time of ſuch Inſurance there be no bad News of the Ship: or, if it is upon one expected from diſtant Countries, that there be no room to ſuſpect any fraudulent Deſign. And upon the whole, we deem it more conſiſtent with Prudence, and more conducive to the Public Benefit, to ſubject Inſurance to ſome Limitations, than to grant a Sanction to it as Gaming, or Wagering.

may expoſe them to great Loſſes by ill-deſigning People.

The Ordinance of *Amſterdam* of 1744; that of *Genoa* N°. 147; of *Conings-berg*, N°. 780; of *Rotterdam*, N°. 236; and of *Stockholm*, N°. 1029; all forbid Inſurance as Wagers, that is, Intereſt or no Intereſt.

By an Act of Parliament 19 *Geo.* II. (N°. 1293.) all Inſurances on *Intereſt or no Intereſt* are expreſsly prohibited in *Britiſh* Veſſels; but not in foreign Veſſels: Though the Reaſons for both ſeem to be equally ſtrong, as we have ſhewn in the *Preface* § 15. The Act, however, excepts among the *Britiſh* Veſſels any private Ship of War fitted out by any of his Majeſty's Subjects to cruize on his Majeſty's Enemies; allowing (N°. 1293.) Inſurances to be made on them by, or for, the Owners, *Intereſt or no Intereſt, free of Average, and without Benefit of Salvage to the Inſurers.* In the granting of which Permiſſion, it is evident the Deſign of the Legiſlature was to remove every Obſtacle or Diſcouragement which might hinder Perſons from concerning themſelves in Privateering.

This Affair of inſuring *Intereſt or no Intereſt* having been very learnedly argued in a Trial before the Houſe of Lords, we ſhall ſubjoin to our *Caſes* the printed Reaſons which were delivered by each Party to their Lordſhips, for their Information in the Nature of the Caſe; and the Deciſion that was given in it, after the Arguments on both Sides had been ſummed up by the Lord Chancellor: Adding a few Obſervations on it, which may ſerve for the Direction of Merchants and Inſurers for the future.

§ 27. Merchants may be allowed to try their Skill in judging or conjecturing about the Riſe or Fall of the Price of any Commodity, provided no Prejudice ariſe from it to the Public, nor any Frauds be committed. A Covenant of this Nature may be called a Wager, rather than an Inſurance. Goods will preferably be ſent to Places where Trade is neither limited nor cramped. Some Perſons may loſe by a Contract to deliver Goods at a fixed Time; on the other hand, others will be

Inſurances on the Riſe or Fall of Goods by way of Wager.

Gainers; and as ſuch Bargains or Wagering muſt draw the Importation of more Goods than otherwiſe could be expected, they will always be of Advantage to the Public: Nevertheleſs we would obſerve that no ſuch Gaming ſhould be allowed of, in Corn, or other neceſſary Proviſions; as that a Premium ſhould be given to have ſuch a Quantity delivered at ſuch a Price: Nor ſhould any Foreſtalling be allowed of, as the buying up Wool, or other unwrought Materials, neceſſary for home Fabrics; much leſs ſhould theſe Commodities be permitted to be exported: But all Trading Cities, on the other hand, ought to encourage, as much as poſſible, the Importation of ſuch Goods as are moſtly ſent out again.

In what Manner Contracts of this Kind are made, ſee *Caſe* 30, N°. 399, *ſur des Marchés d'Option*. People taking too great Latitudes, there was a Reſtraint laid on theſe Negotiations, as appears by a Placart of *Amſterdam*, the Date we cannot recollect: Nevertheleſs they are ſtill practiſed there, though the fulfilling ſuch Engagements depends on the Party's Honour, as they are not by Law bound to perform their Covenants. Such Contracts likewiſe were forbid in 1746, at *Hamburgh*.

Inſurance on Lotteries.

§ 28. It has been ſometimes practiſed, when a Lottery was on foot, to inſure for a certain Premium, that a Ticket ſhould not be drawn a Blank; and if it was, that the Inſurer ſhould pay for that Ticket a Sum agreed on. If neither the Inſurer nor the Inſured were any Ways concerned in the Management of the Lottery, ſo as to give room for a Suſpicion of Colluſion or fraudulent Dealings, we do not perceive any great Harm in this; provided moreover that they acted openly, and the Advantage and Diſadvantage of the Chance were viſible. For Inſtance; if five Perſons ſhould riſk 100 *l.* each, to be determined by one Ticket, to which of them the 500 *l.* ſhould belong; there could be no Harm for an Inſurer to offer any one of them to reſtore to him his 100 *l.* if he ſhould be a Loſer, provided he paid 82 *l.* for the Riſk: And ſome would rather content themſelves with 418 *l.* than be expoſed to the Loſs of 100 *l.* inſtead of a Chance for 82 *l.* And it is very plain that if all five paid 82 *l.* to the Inſurer, he would have 10 *l.* clear Profit without running any Riſk.

Note, Such Sort of Inſurances appear by *Caſe* 32, N°. B, to have been made in 1712, at *Amſterdam*, by the famous *John Law* (afterwards Controller-General of the Finances of *France*) and he muſt have been a great Gainer, as will be ſeen by the Calculation added to this *Caſe*.

Our

Our Inſurance Companies in *London* would doubtleſs have been greatly benefited, had they been permitted (in the Lottery of 1753) to inſure at a Premium of 2½ *l.* to make good whatever Prize a certain Number pitched on by the Inſured ſhould produce; for if every Number had been inſured at that Rate, the Inſurers would have gained only a Sixth leſs than the Government raiſed by the Lottery; and the Inſured would have had the ſame Chance for 2½ *l.* as others that took Tickets at 3 *l.* We only remark this by the bye, as it is not to be expected that any Aſſociation or Community of Men ſhould have the ſame Liberty as the Legiſlature has, to impoſe a Tax or Penalty on the Folly of Gaming, for ſo it may with great Juſtice be called.

§ 29. Inſurances from Fire are introduced into ſeveral Countries, though not every where under that Denomination. At *Hamburgh* there is a *Fire Caſſa*, of an old ſtanding, wherein the principal Houſes are inſured at the Value of 15000 Marks (which is about 1000 *l.* Sterling) to be paid in caſe of their being burnt; the Inſured paying yearly ¼ of a Mark for every thouſand Marks, for Expences. Every one concerned in this Office, or *Fire Caſſa*, contributes to a Loſs in Proportion to what his own Houſe ſtands inſured for; but no Houſe is valued at more than 15000 Marks, though it may have coſt ten Times that Sum in building. We can account for this Limitation no otherwiſe, than by ſuppoſing the Intention of the Legiſlature to have been to curb by this Valuation the Pride of the Citizens, and hinder them from being too magnificent in their Buildings: A very wiſe Maxim certainly in a Trading City! It remains however with us worthy of Conſideration, whether the Government of that City ſhould not admit of Inſurances to be made on a greater Value than 15000 Marks, becauſe the Price of Labour and Materials is ſo much increaſed ſince that Regulation. We muſt hint likewiſe, that it is not a little ſurprizing that in ſo populous and fine a Place as *Hamburgh* is, an Inſurance on Merchandize from Fire has not been ſettled either by their *Fire Caſſa*, or ſome other Society, ſince the Riſk there cannot be judged ſo great as elſewhere, by Reaſon of the vaſt Plenty of Water, and the Diſpoſitions they have made for extinguiſhing of Fires. Inſurance from Fire.

In *London*, Inſurances from Fire are obtainable at ſuch eaſy Rates, that there are few Merchants but chuſe to be inſured for their own Quiet. Beſides, this Precaution adds to their Credit both at home and abroad, when it is known that the great Capitals lying in their Houſes and Warehouſes are thus ſecured from

from the Flames. Here the Premium on Brick Houſes, or on Goods lodged in Brick Houſes, is but 2*s.* on each 100*l.* to the Value of 1000*l.* and 2*s.* 6*d.* on each 100*l.* to the Value of 2000*l.* and ſo on, except where hazardous Trades are carried on; ſuch as Sugar-Refiners, Diſtillers, and Chandlers; or on dangerous Commodities, as Hemp, Flax, *&c.* as will appear by the Propoſals and Policy of the *London* Inſurance-Company (N°. 1332) which has taken a very good and neceſſary Precaution, by inſerting the Condition, that, whenever any Houſes are burnt, it ſhall be at the Company's Option, either to pay the Loſs, or rebuild them; for this takes away the Temptation from all inſured Leaſeholders of deſtroying their Houſes, as the Landlords, and not they, would in ſuch caſe be benefited by it. And it is a ſimilar good Diſpoſition, that when Goods are burnt, the Inſurers have it in their Choice, either to make a pecuniary Satisfaction, or to repair the Damage by a Quantity of Merchandize, equal in Kind, Value, and Goodneſs to thoſe damnified, or loſt; which effectually prevents any iniquitous People (who may have a Parcel of Goods on hand greatly fallen in Price) from ſetting them on fire, in Expectation of recovering from the Inſurers what they coſt. However as in *London* ſome have maliciouſly ſet fire both to Houſes and Merchandize, no Perſon ſhould ever reſent the ſtricteſt Enquiry being made into the Calamity; but a general Miſtruſt in this Particular ought to be eſteemed needful, ſince it is for the Public Good that Delinquents be diſcovered, and brought to Juſtice. Where any Grounds of Suſpicion appear, it is not doubted but both Judge and Jury will carefully examine into, and canvas the Affair on a Trial, that Incendiaries may receive the Puniſhment due to their atrocious Crime; and not condemn the Inſurers to pay on ſuch ſlight Evidence, as they often are in Marine Caſes. On the other hand it ſeems clear to us, that the Corporations of Inſurance may often blame themſelves for too eaſily admitting and underwriting of Policies on Houſhold Goods and Wearing Apparel, from Perſons quite unknown.

Inſurance on Lives.

§ 30. Mens Lives with good Reaſon are, and may be, inſured, to ſecure to a Creditor the Reimburſement of a Sum advanced to his Debtor for purchaſing a Poſt or Place; out of the Income of which, he may have a Sufficiency, beſides his Main-

Maintenance, and Expences, and Intereſt, and Premium, to pay off yearly a Part of the Capital: However the Lender ought not to inſure the Life of the Borrower without having his Conſent. In ſome Places Inſurances are not permitted on the Lives of Perſons at the Head of Government [*a*], but in *London* People take the Liberty to make Inſurances on any one's Life without Exception; and the Inſurers ſeldom enquire much if there are good or bad Reaſons for ſuch an Inſurance, but only what the Perſon's Age is, and whether he be of a good Conſtitution. The common Premium on a good Life from 20 to 50 Years of Age is 5 *per Cent.* and from 50 to 60 Years old, 6 *per Cent. per Annum*; though theſe Rates appear by *Caſe* 31. N°. C, to be rather too high in the Inſurer's Favour; not but there are ſome young Perſons between 20 and 30, whoſe Irregularities render their Lives more precarious than others in a more advanced Age [*b*]. People ought by all Means to be prevented from getting Inſurances done with ſiniſter Views, eſpecially that inhuman one of committing Murder to gain the Sum inſured; an Inſtance of which Villainy happened a few Years ſince in a *London* Apothecary, who having got his Wife's Life inſured, ſoon after killed her. Underwriters ſhould therefore inform themſelves of the Motives, why an Inſurance is required, and not be contented with obſcure, plauſible, or fictitious Reaſons. It is indeed true that the Inſurers are not obliged to pay to a Murderer convict, as happened in the Caſe of the aforementioned Apothecary; yet this does not reſtore the Life ſacrificed. A great Part of the Inſurances done on Lives in *London* are for or by People, who have certain Expectations in Reverſion after the Death of ſome Friend or Relation, whoſe Poſſeſſions they have a Mind in Part to anticipate by this Means: But ſuch Inſurances ſeem not eaſily to be juſtified, as they fruſtrate the Intention of the Bequeather, and frequently overſet a good Deſign: And by *Caſe* 32. N°. B, we ſee how ſoon a fine Eſtate may be anticipated and run out by this irregular Method. All Ordinances of Inſurance allow it to be made upon the Lives of Captives in Slavery; but to ſubſiſt no longer than the Bondage does, or till the Perſon be redeemed [*c*].

[*a*] At *Genoa*, N°. 155, No Inſurances may be made, *ſine licentia ſenatus, ſuper vita pontificis, neque ſuper vita imperatoris, neque ſuper vita regum, nec car-*

cardinalium, neque ducum, principum, epiſcoporum, neque aliorum dominorum, aut perſonarum eccleſiaſticarum, ſeu ſecularium, in dignitate conſtitutarum.

[*b*] At *London* we have an Office for the Inſurance of Lives, at *Serjeants-Inn*, in *Fleetſtreet*, of which Mr. *Poſtlethwayt* gives an Account in the firſt Volume of his *Univerſal Dictionary of Commerce*, page 150. It was erected the 25th of *July*, 1706, by a Charter from Queen *Anne*, granted to the then Lord Biſhop of *Oxford*, Sir *Thomas Allen*, Bart. and others, for incorporating them and their Succeſſors by the Name of the *Amicable Society for a Perpetual Aſſurance-Office*; whereby they might provide for their Wives, Children, and other Relations, *&c.* And the chief View of the Biſhop of *Oxford* ſeems to have been to induce Clergymen to ſave a Premium out of their yearly Income for inſuring their Lives; ſo that when they died their Families might recover the Sums inſured: which has proved to be a Comfort to many Perſons. And this doubtleſs is a very good Inſtitution. All Perſons to be admitted are to be between the Age of 12 and 45 Years, and appearing in a good State of Health at the Time of their Admiſſion, when they pay 10 Shillings Entrance-Money, and the Charges of the Policy, and 5 *per Cent.* yearly Premium afterwards: and long as they continue to pay that Premium yearly, their Life may be inſured with the Corporation at the ſame Rate; which elſewhere might be refuſed. To thoſe who continued yearly to pay 5 *l.* Premium, ſomething more or leſs than 100 *l.* has been repaid; to wit, from the Year 1734 to 1748 it amounted, at an Average, to 106 *l.* 5 *s.* 7 *d.* and we wonder that it has not been more; but we apprehend that the Corporation is not yet extenſive enough, and that it labours under too heavy Charges.

[*c*] At *Hamburgh*, N°. 881; *France*, N°. 673; *Coningsberg*, N°. 780; *Stockholm*, N°. 1083; *Copenhagen*, N°. 1263.

Inſurance on Cattle.

§ 31. When any infectious Diſtemper reigns among the Cattle, Graſiers or Cowkeepers, whoſe Capital is chiefly employed therein, and may be more than they can afford to loſe, are permitted to inſure the Lives of their Stock before the Sickneſs has appeared amongſt them. By *Caſe* 23, in the ſubjoined Collection, it appears, that in a Policy, N°. 307, made at *Hamburgh* in 1720, each Ox was valued at a certain Price, and for the Riſk (which commenced the firſt of *May*, and laſted to the middle of *October*) Ten *per Cent.* Premium was given: In *July* the Diſtemper got among them, and out of 62 Oxen inſured, only 18 remained alive. It was proved, N°. 309, that there had been no unfair Dealing in this Fatality; and N°. 310 ſhews how the Loſs was adjuſted. Such Policies ſhould always contain a Declaration by the Perſon inſured, that to his Knowledge no Diſtemper was at that Time amongſt them, and that no diſeaſed Cattle ſhould with his Conſent come near thoſe he in-

inſured. The Inſurers are to take Care that they be not over-valued.

§ 32. When any Loſs happens, a Proof of the Value of the Thing ſerves as a Foundation to make a proper Demand for it. Now the Value of what is inſured being inſerted in a Policy, and the Inſurers by ſuch Inſertion admitting of that Valuation, nothing will remain to be proved, ſave that the Goods valued were put on board.

When Goods inſured are valued in the Policy, no Account is required.

§ 33. Though by ſome Laws it be forbid [*a*] to value Ships, and Goods above their real Worth, yet Inſurers commonly abide by the Valuation made by the Inſured, and do not refuſe to admit in the Policy any Rate for a Bale named without knowing what it contains [*b*]. As they receive a proportionate Premium, it is but reaſonable they ſhould be determined by that Valuation; except the Inſured has had it in his Power to damnify his Goods: And when any Evidence is offered of his having ſo done, a Judge and Jury ought to inſiſt upon the real Value being proved. If they be found to be greatly over-rated, it will naturally corroborate the Teſtimony of their being wilfully damaged; otherwiſe, it will clear the Inſured from all Suſpicion, where the Evidence is not plain and poſitive, and procure a Sentence in his favour, though the real Value appeared to be a ſmall Matter leſs than that fixed upon them.

All ſuch Valuations ſhould ſtand good, except when there is Evidence of a Fraud.

[*a*] Ordinance of *Antwerp*, of *Phil.* II. N°. 59, 61; of *Genoa*, N°. 147; of *Middleburgh*, N°. 166, 167; of *Rotterdam*, N°. 278; of *Amſterdam*, N°. 518, 533; of *France*, N°. 680, 684; of *Coningsberg*, N°. 777, 778.

[*b*] The *Recopilacion de Leyes de las Indias*, N°. 111, ſays, the Inſured's Oath ſhall be ſufficient to prove the Value inſured. By the Ordinance of *Hamburgh*, their authorized Diſpatcher of Averages is charged, in caſe of Damage, to regulate it according to the Valuation in the Policy; or, when no Valuation is made, according to the Invoice.

§ 34. To obtain what is aimed at by a Valuation, it is not ſufficient to make it in the Lump, at ſo much *per* Bale, or Cheſt, becauſe this would only ſerve in caſe of a total Loſs: But to make a Valuation of Service where Goods are damaged, or partly loſt, the Policy muſt expreſs what particular Goods they were, and their Value, at a certain Price by the Piece, Yard, Pound, *&c.* the Inſured paying the Premium in full on that Amount.

Valuations in the Lump do not anſwer the End of particular or partial Loſſes.

In the Articles laid before the Houſe of Commons for an Ordinance of Inſurance in *London* (N°. 1303) it is ſaid the Inſureds may fix a particular Value, in Inſuring, upon the Weight, Meaſure, or Tale, or on each Cask, Bale, or uſual Parcel or Package, *&c.*

Valuations are by ſome Circumſtances rendered abſolutely neceſſary.

§ 35. Some Circumſtances render it more particularly neceſſary to make a Valuation in the Policy; as in Inſurances where the Goods ſhipped are greatly riſen in Price ſince the Time when they were bought and embarked, or inſured. Wheat, for inſtance, may have coſt 20*s.* *per* Quarter, and before the Ship's Departure, or Arrival at her deſtined Port, may be worth where ſhipped 30*s.* in which Caſe, the Proprietor is certainly at Liberty to inſure it at the high Price; but he ſhould expreſs it in the Policy to be worth ſo much *per* Quarter. To illuſtrate this ſtill more, we may obſerve that thoſe who have reſided at *Cadiz*, know that a Quintal of Iron (which with all Charges on board ſtands in about 4 to 4 ½ Dollars) is worth at leaſt 6 Dollars, ſo ſoon as it is laden in a Ship licenſed for *La Vera Cruz*, at the Freight ſtipulated by the *Spaniſh* Ordinance, which is limited to a Dollar and a Quarter at moſt *per* Quintal. Other Goods paying a much higher Freight, the Owners of Ships never accept of more Iron than what is ſufficient to ballaſt them; and therefore this Commodity is ſeldom over plenty at *La Vera Cruz*, where it generally ſells for 10 Dollars *per* Quintal, or upwards.

Other Reaſons for Valuations.

§ 36. When a Perſon inſures upon Goods he expects from Places where no Courſe of Exchange is current, or where Alterations in the Value of their Coin may be made, the ſpecifying of its Value and Correſpondence with ours, in the Policy, is a very neceſſary Precaution. The Shares of Ships ought alſo to be preciſely valued in the Policy, when it is not their firſt Voyage, becauſe it will be difficult to prove, what their Worth may be in ſubſequent Voyages, or what is really loſt of the original Value by Wear and Tear. If the Owner of a quarter Part of a Veſſel values it in the Policy at 500*l.* and only gets 400*l.* inſured, it is clear that he ought to be conſidered as an Inſurer for 100*l.* himſelf; and although in a groſs Average the Inſured's Share may be charged but at the Value of 400*l.* he muſt nevertheleſs bear his Part for 100*l.* of that Average, as a joint Inſurer with the reſt. People not duly weighing Things, and conſidering them as they ought, often

often make Over, or Under Appraiſements, to their own Loſs. If a Perſon intends to be no Loſer by his Valuation, he muſt inſure to the full the Sum he values his Goods at, and pay the Premium for it. Yet this muſt be obſerved, that in caſe the Inſured hath ſomewhat over-valued his Goods, and on their ſafe Arrival they really produce, when ſold, leſs than the Valuation; whatever he paid for Premium on ſuch Over-valuation will be a proportionate Leſſening of his Profits. See *Caſe* 17. N°. 265, 266.

§. 37. By the Ordinance of *Hamburgh*, *Tit.* xii. *Art.* 4. N°. 948. when no Valuation is made in a Policy, the Invoice of the Coſt, with the Addition of all Charges, and Premium of Inſurance, and Re-Inſurance, ſhall be the Foundation to compute the Loſs by; and no Regard be paid to any Market-Price, or imaginary Profit. And this had been the Cuſtom at *Hamburgh*, and moſt other Places, for many Years before that Ordinance, as appears by a Regulation which *Langenbeck* gives in his *Annotations*, page 214, of a Ship's Loſs made in 1704: The Coſt of 200 Butts, 63 Halves, and 15 Quarters of Currants was computed to be 24438 Ducats, which at 87 Groot, with 16 *per Cent.* Agio, is - - - - - - *M* 77074 4

When no Valuation is made in the Policy, it is the Coſt of the Goods with all Charges on board, and the Premium of Inſurance included, that makes the Value inſured.

Premium of Inſurance and Brokerage				
16 $\frac{5}{16}$ *per Cent.*	-	-	-	12572 12
Re-Inſurance at ditto	-	-	-	2051
				M 91698

In which Calculation the Word *Re-Inſurance* is certainly uſed in a wrong Senſe, as the Meaning can only be, that Inſurance might be made as well on the Premium, as principal Coſt. A Cuſtom hath almoſt every where prevailed of calculating in an erroneous Way the *Quantum* that may be inſured for Premium. It is evident by the preceding Regulation that the Inſured ſtill fell ſhort (in caſe of a Loſs) for the un-inſured Premium of 2051 Marks: The Truth of which the following Inſtance will illuſtrate. At a Premium of 10 *per Cent.* the Account would ſtand thus;

£. 100	at	10	the Premium	is	10	
on	10	-	-	is	1	
on	1	-	-	is	$\frac{1}{10}$	
of	$\frac{1}{10}$	-	-	is	$\frac{1}{100}$	
of	$\frac{1}{100}$	-	-	is	$\frac{1}{1000}$,	*&c. &c.*

which infinite Series, ſummed up by Algebraical Rules, will make exactly 11 $\frac{1}{9}$ *per Cent.* when the Premium is Ten *per Cent.* and the Inſured deſires to be wholly covered from any Loſs; but taken in a right Senſe, common Arithmetic would ſolve the Propoſition in the following Manner, *viz.* If for 100 *l.* inſured, you receive only 90 *l.* it is for the Value of 90 *l.* that you pay 10 *l.* Premium: Therefore as 90 *l.* is to 10, ſo is 100 *l.* to 11 $\frac{1}{9}$; and therefore to get 100 *l.* without Loſs, you muſt inſure 111 $\frac{1}{9}$. To illuſtrate this ſtill farther: In the abovementioned Caſe cited by *Langenbeck*, the Premium of 16 $\frac{5}{10}$ was paid on the Worth of 100 Marks of Currants; therefore you only intrinſecally receive for 100 Marks inſured 83 $\frac{11}{10}$, becauſe you pay 16 $\frac{5}{10}$ Premium; and conſequently for every 83 $\frac{11}{10}$ ſhould inſure 100 Marks; and for *M.* 77074 : 4, as above, *M.* 92097 $\frac{11}{10}$ ſhould be inſured, and not 91698, as erroneouſly calculated there, in order to receive clear *M.* 77074 : 4. The Queſtion, whether the Premium of a Premium ought to be admitted as a Part of the Value inſured, uſed to be warmly conteſted in *London:* But it is not only allowed now to inſure there in full for all Premiums, but likewiſe for the Deduction of 2 *per Cent.* in paying Loſſes, as the Inſurers make good only 98 for 100, as is clearly ſtated in our *Caſe* 3, N°. 10, 11.

The Difference that Goods coming to a gaining Market make, valued or not valued, reconciled.

§ 38. The Ordinance of *Hamburgh* alſo explains another Particular, *Tit.* xii. *Art.* 4. where it is ſaid, " That when any " Part of Goods valued in a Policy ſhall be found damaged, " they ſhall be ſeparated from thoſe not damaged, and ſold " publickly by themſelves, whether many or few; and the " Diſpatcher of Averages ſhall regulate the Damage conform- " able to the Valuation made in the Policy, without regarding " what the Goods not damaged would produce; and the In- " ſurer is to pay his Damage notwithſtanding the found Goods " ſhall produce more than the Valuation of all the Goods put " toge-

" together." This, we imagine, will be fully comprehended by reading our *Caſes* 18 and 19. Yet, for a farther Illuſtration, let us ſuppoſe that 100 Laſts of Corn ſhipped at *Dantzick*, with the Premium of Inſurance and all Charges, ſhould be calculated to ſtand at *Hamburgh Rl.* 5000, which is 50 Rix Dollars a Laſt, and in the Policy of Inſurance it was ſo valued. On its Arrival at *Hamburgh*, 50 Laſts are found not damaged; which, clear of Freight and all Charges, yield neat, at 80 *Rl.* a Laſt, 4000 *Rl.* and 50 Laſts wet with Sea Water yield neat, at 40 *Rl.* 2000 *Rl.* The Diſpatcher of Averages at *Hamburgh*, according to the abovementioned Ordinance, might make up the Account, that

As 50 Laſts valued at 50 *Rl.* is - -	*Rl.* 2500
Which produced - - -	2000
The Inſurer ſhould pay no more than	*Rl.* 500

But we think that though the Goods were valued in the Policy, the Inſurers ought not to take the Advantage of the Market's Riſe to themſelves: For notwithſtanding the Corn not damaged ſold with a Profit of 30 *Rl.* that is at 80 *Rl. per* Laſt; the Damaged, though it ſold but at 40 *Rl.* will ſtill include a proportionable Part of the Advantage of the Market in thoſe 40 *Rl.* and it remains evident that the Corn loſt half of its Value by being damaged. Now let its firſt Coſt, or what it was valued at, be conſidered, and it ſeems clear that the 50 Laſts coſt, and were inſured for, 2500 *Rl.* of which (if found) the Produce would have been 4000 *Rl.* and the Deficiency it now leaves is - - - - - *Rl.* 2000

But then the Inſurers ought only to pay for 2500,		1250
And the Inſured himſelf ought to bear for its advanced Price at 50 *per Cent.* -	1500 -	750
		Rl. 2000

Which may be compared with what is urged in *Caſes* 5, 14, 15 and 16, N°. 127, 254, 259, 261, where we differ ſomething from what the *Amſterdam* new Ordinance ſays, N°. 546, " Such Damages ſhall be reckoned on the groſs Produce:" Which ſeems not to hold good in all Caſes; for let us ſuppoſe

That

That 50 Laſts of Corn coſt with all Charges and Premium of Inſurance - - - *Rl.* 2000
Being damaged it ſold but at 30 *Rl.* is - - - 1500
If it had not been damaged, it would have ſold at 60, is - - - - - - 3000

At firſt View the Inſurers ought ſeemingly to pay 50 *per Cent.* on the Sum inſured, ſince the Corn loſt 50 *per Cent.* by the Damage, which would be 1000 Rix Dollars: But we are to ſtate and conſider it in this Manner;

Suppoſing the 50 Laſts had not been damaged, at 60 Rix Dollars they would have produced - *Rl.* 3000
From whence Freight, and other Charges deducted 500
Remain 2500

Being damaged, it ſold only at 30 *Rl.* - *Rl.* 1500
The ſame Freight, *&c.* to be deducted - 500
1000

The actual Loſs therefore is - - *Rl.* 1500

Which in our Opinion ought to be reckoned on 2000 *Rl.* the Sum inſured, and 500 *Rl.* which the Corn would have produced as above had it arrived without Damage: So that the Inſurers on 2000 *Rl.* at 60 *per Cent.* pay - - - *Rl.* 1200
And the Inſured on 500 *Rl.* - - - - 300
Rl. 1500

It is therefore clear that 60, inſtead of 50, *per Cent.* muſt be paid by the Inſurers; which Difference proceeds from what the Inſured is no ways to be blamed for, namely, that the damaged Corn pays the ſame Freight and Charges, as if it was not damaged.

The Difference it makes, when Goods come to a loſing Market, valued, or not valued, alſo reconciled.

§ 39. We will ſuppoſe that 2000 *Rl.* Inſurance is made on 50 Laſts of Wheat, valued at that Sum, and that it comes to a loſing Market; then the Account will ſtand as follows;

50 Laſts

50 Laſts arriving ſound would have ſold at *Rl.* 40, is		*Rl.* 2000
Deduct for Freight and Charges - - -		500
		1500
But being damaged it ſold only at 20 *Rl.* is	*Rl.* 1000	
Deduct for Freight, *&c.* - - -	500	
		500
Then the Loſs is -		*Rl.* 1000

It is very evident that the *Rl.* 1500, the Corn would have ſold for, being reduced to *Rl.* 500, the Loſs would be 66 $\frac{2}{3}$ *per Cent.*; and 66 $\frac{2}{3}$ *per Cent.* on *Rl.* 2000 inſured, would be *Rl.* 1333 $\frac{1}{3}$. But as the Inſured could have received no more than *Rl.* 1500 had the Wheat come without Damage, he ought therefore to demand no more than *Rl.* 1000; which, with the *Rl.* 500 for the damaged Wheat, makes exactly the Sum he could have ſold it for. It is nevertheleſs our Opinion that the Inſured may give up the damaged Corn to the Inſurers, and demand, in lieu thereof, 50 Laſts of good ſound Corn: Then the Account would ſtand thus;

50 Laſts at 40 *Rl.* - - - -		*Rl.* 2000
50 Laſts of damaged would ſell only at 20 *Rl.*	*Rl.* 1000	
Out of which muſt be paid for Freight, *&c.*	500	
		500
In this Manner the Inſurers would loſe		*Rl.* 1500

Which is juſt the ſame Sum as if the Corn had come to a gaining Market, and conſequently what they ought to pay. Compare this with *Caſe* 5, N°. E, F, G. *Caſe* 27, N°. R, S, T.

If Goods are brought from Places, where no Bills of Exchange can be had, but moſt of the Returns are in Specie, their Value ought not to be reckoned at more than what the Specie from thence would produce neat.

§ 40. Goods ſent from Places where no Exchange is current, as from the Dominions of *Spain* and *Portugal* in *America*, and not valued in the Policy, ought, in caſe of a total or partial Loſs, to be reckoned to the Inſurers at no higher Value, than what Bullion, or the actual Coin or Specie brought from thence will produce in *Europe* after the Payment of a Premium for the Riſk of the Voyage, Freight, *&c.* To explain this more fully: The ſame Specie, or *Mexican* Dollar, which when brought to *Cadiz* paſſes there for 10 $\frac{5}{8}$ Rials Plate, and is now worth in *London* 4*s.* 9*d.* ſhould not be valued in an Inſurance, when ſhipped at *La Vera Cruz*, at ſo much as 4*s.* 9*d.* becauſe thoſe Dollars are not worth that Price till delivered aſhore at *Cadiz*; and

and there they cannot ſafely be landed without paying the following Freight, Indulto, &c. For Example: In 1753 on 1000 Pieces of Eight in the laſt Ships from *La Vera Cruz*, at *Cadiz*

The King took for Indulto and Marina 9 *per Cent.*		
The Captain of the Ship for Freight and Counting - - - - - -	3 ½	14 ½
The Conſulado - - - - - -	1	
The Almirantaſgo - - -	⅛	
Church and Loan - - -	⅜	

And conſequently every 1000 Pieces of Eight ſhipped at *La Vera Cruz* yielded neat to their Owner at *Cadiz* but 858 Pieces; which at 10 ⅝ Rials of Plate each, is 9116 ¼ Rials of Plate, and at 41 Pence for eight Rials, is at *London* 3 *s.* 10 ¾ *d.* Sterling for each Piece of Eight; the inſuring of which to pay 98 for 100, is rating them at 3 *s.* 11 ½ *d.*: So that each Piece of Eight ſhould not be valued in a Policy at *London* for above four Shillings Sterling, becauſe the Inſured could not poſſibly have made more by the Specie, had the Ship come ſafe. Moreover with regard to Returns made in Goods, if the Inſured does not declare what they are, nor make any particular Agreement to value and inſure a certain Quantity, or Weight, at a certain Price, the Inſurers are no ways concerned in the Profit or Loſs the Inſured may make by the Adventure, they being only anſwerable for its firſt Coſt reduced into *Cadiz* Money at the ſame Rate, as Specie brought from *La Vera Cruz* ſhall produce neat, ſafely landed at *Cadiz*. See *Caſes* 4 and 7, N°. 14 and 146.

If Goods are ſhipped from Places, whence any Returns ſeldom come in Specie or Bills of Exchange, the Value of ſuch Goods cannot well be inſured at, or reputed to be worth more than what according to the current Prices they would have yielded neat at the

§ 41. In the laſt War between *England* and *France* (in 1744) ſo many of the *French* Inſurers failed, that moſt of their Inſurances came to be made in *England*. Great Numbers of their Ships being taken, the Premiums ran up from 18 to 40 *per Cent.* from their Sugar Iſlands to *France*. So great a Temptation to our *Engliſh* Inſurers made them write away blindfold in many Reſpects, and ſubmit to a Valuation of 11 Pence Sterling for a *Martinico* Livre. The *Frenchman* moreover might inſure the Premium, ſo as to leave him eleven Pence clear for each Livre ſhipped in the *Weſt-Indies*, notwithſtanding that few could be ignorant of the *American* Currency's being above 33 *per Cent.* worſe than the Money in Old *France*; which at the Exchange of about 32 ½ *d.* *per* Crown of three Livres, renders the *Weſt-Indian* Livre to be in reality not worth 8 *d.* So that if the Valuation of 11 Pence was admitted, the Premium of Inſurance ought

ought to have been underſtood as comprehended in it; yet our Inſurers allowed the contrary; and Byſtanders were ſurprized to ſee many Men of Experience underwrite Policies, where ſome of our Enemies were ſure to get more by the Loſs of their Ships, than by their ſafe Arrival: Which may be illuſtrated by the following Calculations, ſimilar to Facts which at that Time really happened. Time of making the Inſurance.

A Perſon inſures in *London* 6000 *l.* Sterling, to be paid 98 *per Cent.* in caſe of Loſs, on Goods from *Martinico*, and the Livres of that Place to be valued at 11 Pence Sterling each; at a Premium of 40 *per Cent.* The Ship was taken, and an Account ſent from *France*, that 300 Hogſheads of Sugar had been ſhipped for the Inſured, *viz.*

100 Hhds brown, neat 800 Ct. which coſt at *Martinico* - - at 16 *l.*		*l.* 12800
100 Ditto Terré - 800 - - 30		24000
100 Ditto White - 800 - - 40		32000
		l. 68800
Domaine 1 *per Cent.* - -		688
Rabatage - - -		550
		l. 70038
At 11 *d.* Sterling *per* Livre, is -	£. 3210	1 6
Inſurance at 40 *per Cent.* for 98, required to be covered in full, is £. 5534 - -	2213	12
	£. 5423	13 6
Thus the Inſurers had to pay for £. 5534, at 98 *per Cent.* - -	£. 5423	7
And to return the Premium for £. 466, at 39 ½ *per Cent.* - -	184	1
	£. 5607	8

Now it appeared by Advices received of the Prices of Sugars at that Time, that the abovementioned Parcels (after deducting 10, 5, and 2 ½ *per Cent.* for Leakage, and Loſs in Weight) could not have yielded

Above 720 Ct.	Brown at	30 *l.*	-	-	*l.* 21600
760	Terré	40	-	-	30400
780	White	55	-	-	42900
					l. 94900
Deduct for Freight at 20 Deniers *per l.* with 10 *per Cent.* Average			-	*l.* 22000	
For other Charges			-	960	
					22960
Conſequently if the Ship had come ſafe it would have yielded but			-	-	*l.* 71940
And this at 11 *d.* Sterling is			-	-	£. 3297 5
And for Return of Premium no more could have been received than as above				-	184 1
So the Inſured was bettered by the Ship's being taken			-	-	2126 2
					5607 8

It is true, that the Prices of Sugars, which before the War had been at 24 *l.* the Brown; 30 *l.* the Terré, and 52 *l.* the White, in the *French* Iſlands, went lowering; and in *France* they roſe above what they are here computed at; ſo that they could bear to pay a high Premium of Inſurance; nevertheleſs they did not riſe ſo much as to clear beſides this the high Valuation of 11 Pence *per* Livre. Our Opinion is, that the Intention of thoſe who firſt deſired to have a Livre valued at 11 Pence, was, that the Premium ſhould be included in that Valuation: For is it reaſonable to imagine that any one would give a Premium for more than his Returns could poſſibly produce? It may moreover have happened, that the People here, who introduced this Method, hardly gave themſelves the Trouble of a Calculation, or ſo much as to conſider about it; ſince it ſeems clear to us, that if they had, they would have avoided expoſing their Correſpondents to the Riſk of failing, by paying Premiums for what their Engagements could never produce. In the War abovementioned Indigo was a Commodity that for a long while did not fall proportionably in the *French* Iſlands, and riſe in *France*: Therefore whatever *Frenchman* over-inſured in

England

England on his Indigo, or had not the full Returns ſhipped, would, in caſe of the Ship's being taken, be a conſiderable Gainer upon the Valuation of 11 Pence for a Livre of the *French* Iſlands [*a*].

We think that the right Method of inſuring from the *French* Iſlands, would be to ſpecify always in the Policy, at what Prices the different Sorts of Sugar, Indigo, Coffee, and Cotton, ſhall be rated at clear on board; and for what is not ſo rated, to ſay that each Livre ſhall be valued at eight Pence Sterling, Premium included. Agreeably to this, in the Regulation of a Loſs of an Inſurance made at *Marſeilles* in 1736, by Mr. *Lewis Marſeille Marion*, a Merchant, and Mr. *Joſeph Jullien*, a Broker, of that Place (who were nominated Arbitrators in the Affair) they calculated on the Value that a *Spaniſh* Piſtole bore in *France*, and in the Sugar Iſlands; it ſelling then at *Marſeilles* but for 19 Livres, 14 Sols, though it paſſed in the Iſlands for 27 Livres: Such a Livre ſhould not therefore be admitted at *London* for more than eight Pence in Time of Peace.

[*a*] Beſides this general Valuation introduced in *London*, though of ſo bad a Conſequence, others of a ſtill worſe Tendency, were not refuſed to be admitted, agreed to, and underwrote: Such as inſuring Intereſt or no Intereſt, and on Goods valued at the Sum inſured, without farther Proof than the Policy in caſe of a total Loſs: Which gave Occaſion to Frauds, as is ſet forth in Beawes's *Lex Mercatoria Rediviva*, Pages 271 and 272. But it was wiſely put a Stop to, by paſſing an Act of Parliament to prohibit inſuring either Ships, or Goods, appertaining to the Crown and Subjects of *France* during the Continuance of the War with them.

The Time and Place when, and from whence, the Riſk of an Inſurance upon Goods commences, and when, or where it ends.

§ 42. In moſt Countries it is expreſſed both in the Ordinances, and Policies, that the Riſk of the Inſurers ſhall begin the Moment Goods go from Shore, and continue till they are landed at the Place of their Deſtination; and that the Underwriters do not only run the Riſk in the Ship named in the Policy, but alſo in all the Boats or Lighters, that ſhall be employed in carrying the Goods aboard, and alſo in fetching them aſhore [*a*]. But the *London* Policies differ herein from all foreign ones, ſaying expreſly (ſee N°. 1335) that the Adventure begins "from and immediately following the loading thereof aboard the ſaid Ship, "ſuppoſe at *Cadiz*, and ſo ſhall continue and endure until tho "ſaid Ship, with the ſaid Goods, ſhall be arrived at *Amſterdam*, and the ſame there ſafely landed." According to theſe

Words, it is very clear the Inſurers are not anſwerable for any Accidents which may happen to the Goods in Lighters or Boats going aboard: Yet as the Policy ſays the Riſk ſhall continue till the Ship with the Goods ſhall be arrived, and the ſame ſafely landed; it can leave no Doubt, in caſe Ships go to Places, where they cannot poſſibly come to unload at Quays, or Wharfs, that the Inſurers muſt run the Riſk in Boats till the Goods are ſafely landed. And this was the Opinion of Sir *John Strange*, and Mr. *Hume Campbell*, on an Accident which happened to ſome Sugars in their Paſſage from the uſual unloading Place on the *Weſer* by Boat to *Bremen*.

[*a*] Ordinance of *Antwerp*, N°. 50; of *Amſterdam*, N°. 510; of *Rotterdam*, N°. 254, 255; of *Spain*, N°. 84, 107, 108, 120; of *France*, N°. 657, 667; of *Coningsberg*, N°. 788; of *Hamburgh*, No. 909; of *Stockholm*, N°. 1207; of *Copenhagen*, N°. 1259.

The Time allowed for unloading of Goods, after Arrival.

§ 43. By ſeveral Ordinances the Number of Days in which People are to unload their Goods is ſtipulated [*a*]. In ſome Policies likewiſe the Time is fixed [*b*]: At *Hamburgh* and *London* the Inſured are not confined to limited Times: But it can no where be expected that the Inſurers ſhall be anſwerable when it is proved that the Ship was kept deſignedly to ſerve as a Storehouſe; excepting at ſuch Places as *Cadiz*, where whilſt the Goods remain in the Ship, the Owners or Factors have it in their Option to enter them for what Place they pleaſe: which occaſions the ſelling large Quantities aboard. If a Captain, without taking any Reward for it, or even taking a Reward, ſhould keep Goods a few Days or Weeks longer than uſual, it ought not to prejudice the Inſurers. To obviate all Difficulties on Goods being kept an unreaſonable Time, it is beſt to ſpecify in the Policy the Days which may be required to unload the Goods, or that they may lie before unloading; and ſuch Days ſhould only commence from and after the Time permitted to unload, as Impediments by Superiors ſhould always be excepted.

[*a*] The Ordinance of *Antwerp*, N°. 62, fixes 15 Days; that of *Rotterdam*, No. 214, 14 Days; that of *Coningsberg*, N°. 788, according to the Bigneſs of the Ship, 6, 10, 14 Days; that of *Amſterdam*, N°. 516, 15 Days; and that of *Stockholm*, No. 1206, 15 Days.

§ 44. The

§ 44. The Riſk on the Body of a Ship, as is expreſſed in a *London* Policy, is commonly to commence "from her beginning "to load at , and ſo ſhall continue and endure, until "the ſaid Ship with all her Ordinance, Tackle, Apparel, *&c.* "ſhall be arrived at , and hath there been moored "at Anchor 24 Hours in good Safety." We have known that in ſome *London* Policies, where Inſurances were made on the Body of a Ship expected from ſome Port abroad, it was ſaid that the homeward Riſk ſhould commence immediately from, and after her Arrival at that Port: Which is interfering with the Inſurances that may have been made outwards, as in theſe Policies the Inſurers run the Riſk for 24 Hours after ſhe is arrived; conſequently the home Riſk ſhould not at ſooneſt commence, till after the four and twentieth Hour from her Arrival. When the Riſk of an Inſurance on a Ship commences and ends.

At ſome Places the Policies expreſs that the Riſk on the Ship ſhall commence from the Time ſhe began to take in her firſt Goods, or Ballaſt, and ſhall continue till after her being arrived, and entirely diſcharged [*a*]. At other Places it is ſaid, the Riſk ſhall end twenty-one Days after her being arrived; or ſooner, if before that Time ſhe be quite unloaded [*b*]. Now it is inconſiſtent in the Thing itſelf (as already hinted § 23, in ſpeaking of Bottomry) that the Inſurer's Riſk on a Ship going out to earn a Freight, all the Expences of whoſe Outſet are commonly comprehended in her Inſurance, ſhould end in twenty-four Hours after her Arrival, ſince it is hardly poſſible to have the Ship ſo ſoon diſcharged; without which no Freight is gained. As to the Clauſe, to end twenty-one Days after her Arrival, or ſooner, if the Ship be ſooner diſcharged; there may be an Interval between that Time and her taking in any Goods for another Voyage, which intervening Space will be uninſured: wherefore we ſhould deem it beſt when an Inſurance is begun, as for Example on a Ship from *London* to *Cadiz*, to ſay, the Risk ſhall commence from, and after the Day the Policy is opened, and continue for twenty-one working Days after her having had Permiſſion at *Cadiz* to unload, or (if ſhe departs ſooner from thence) till the Time of her unmooring, and weighing Anchor for ſailing. When the Inſurance is to be made from *Cadiz* to *London*, or any other Port, it might be ſtipulated, that the Risk ſhould begin twenty-one working Days after

after having had Liberty to unload at *Cadiz*, or, departing ſooner, from the Time of heaving Anchor to depart.

[*a*] The Ordinance of *Hamburgh*, N°. 910, and their Policy, N°. 1014, fixes the Commencement of the Riſk, from the Time of taking in the firſt Goods, or Ballaſt; and its continuing till the Ship be entirely diſcharged.

[*b*] *Amſterdam*, N°. 516, 573; and *Stockholm*, N°. 1206, make its Commencement the ſame; and its ending to be 21 Days after her Arrival, or ſooner, if ſooner diſcharged. *Copenhagen*, N°. 1260, fixes fifteen Days for Diſcharge.

Places circumjacent, when underſtood to be under one and the ſame Port.

§ 45. The Ordinance of *Amſterdam*, N°. 515, ſays, "That "the Risk of the Inſurers begins not only at the Place where "the Ship loads, but at circumjacent Places, ſuch as the Creeks "lying near the Port, and within the Beacons, or Buoys, "which a Ship muſt paſs by, going out." At *London* the Inſurers run the Risk as beforementioned till the landing of the Goods: And it is there taken for granted, that the Inſured have Liberty to put them aſhore at any of the cuſtomary unlading Places in that Port: For Inſtance; all Ships laden with Hemp for *London*, do not deliver at the Cuſtom-Houſe Quay; but this Commodity is generally carried down the River in Lighters, and landed at ſeveral Wharfs on each Side of the Water. Suppoſe a Perſon had ſold Stores to the King, and on his Ship's Arval was ordered to deliver them at *Woolwich*, or *Chatham*; ſurely this ought not to make any Difference in the Inſurance: For though the Words in the Policy run, *till the Ship be arrived at* London, *and the Goods be there ſafely landed*, yet it muſt be lawful for the Inſured to land any where within the Port of that Metropolis; which Port has been ſettled by the Exchequer to be, and declared to extend, from the *North Foreland* in a ſuppoſed Line Northward to the *Naſe*, and continued Weſtward through the River of *Thames*, and the ſeveral Channels, Streams, and Rivers falling into it, to *London* Bridge. With regard to Goods inſured from *London* to *Seville*, the unlading, and landing them at *St. Lucar*, would be but ſhortening the Risk: And on Ships inſured from *Cadiz* to the *Weſt-Indies*, the lading Place ought to be underſtood, as well from, and at the *Caraques*, or behind the *Puntales*, as in the Bay of *Cadiz*. The Inſurers receive a Premium to ſtand in the Inſured's Stead: And if ſomewhat has been omitted, or is not fully, or rightly explained in a Policy;

Policy; if it appears that the Inſurers would have as readily agreed to it, as to what is declared, the Miſtake ought always to be conſtrued in Favour of the Inſured.

In Inſurances made for Perſons who have any Share in the Direction of the Voyage, Enquiry ought to be made whether the Maſter touches in his Way, at any Place.

§ 46. All Policies uſed in *London*, expreſs in the printed Part, "That it ſhall be lawful for the ſaid Ship, or Veſſel, in "the Voyage, to proceed, and ſail to, and touch, and ſtay at, "any Ports or Places whatſoever:" And the ſame Liberty is given by the Policies in moſt other Countries [*a*]. But Diſtinction ſhould be made of the Perſons who make theſe Inſurances. When it is declared that a Ship ſhall go directly to a certain Place; and the Maſter voluntarily ſtops at others in the Way, with the Knowledge of the Inſured, who purpoſely concealed it from the Inſurers, to avoid paying an additional Premium, they certainly ought not in ſuch Caſe to be anſwerable for any Accidents that may happen by thus putting in by the Way. And ſuppoſing Inſurance to be made for Account of an Owner in the Ship, any Enquiries by the Inſurers, to be ſatisfied whether he knew any Thing of the Ship's ſtopping or not, ought to be allowed of.

[*a*] The Ordinance of *Amſterdam* ſays, N°. 517, "An Inſured who has "chartered a Ship, ought not to order her to touch at any other Place, or "to change the Voyage different from his Declaration in the Policy: "he does, his Inſurance ſhall be null, and void, notwithſtanding the Po- "licy contains this Expreſſion, *That it ſhall be permitted for the Ship to "touch and ſtay any where.*" On the other hand it ſhall be no Prejudice to the Inſured if a Maſter of a Veſſel of his own Head puts into Ports, or deviates from his Courſe, provided it be done without the particular Direction of the Inſured. It is the ſame in the *Middelburg* Ordinance N°. 177. in the Ordinance of *Rotterdam* N°. 259. and in the Ordinance of *Stockholm* N°. 1042, 1043.

It is generally allowed that ſhortening the Riſk for the Inſurers cannot be deemed unlawful.

§ 47. The Ordinance of *France* N°. 698. ſays, "The In- "ſurers ſhall be diſcharged from the Riſk, without loſing the "Premium, if the Inſured, without their Conſent, ſend the "Ship to a Place farther diſtant than that mentioned in the Po- "licy, though in the ſame Courſe; but the Inſurance ſhall have "its full Effect, if the Voyage be only ſhortened." Hence it ſeems evident, that if Goods be inſured in a Ship from *Hamburgh* to *Malaga*, and ſhe ſtops at *Cadiz*, the Goods may be landed there at the Risk of the Inſurers: And in this Particular ſeveral other Ordinances agree, by declaring that when

a Ship's Voyage is ſhortened, the Risk ends, and the Premium is gained; but they are not ſo explicit as to ſay that the Inſurance ſhall have its full Effect. *Hamburgh* N°. 925. *Stockholm* N°. 1044.

Riſks which the Inſurers are to anſwer for.

§ 48. The Damages which the Inſurers have to bear, are deſcribed in all Policies. Our *London* Policy, N°. 1334, ſays "They are of the Seas, Men of War, Fire, Enemies, Pirates, "Rovers, Thieves, Jettiſons, Letters of Mart, and Counter-"mart, Surprizals, Takings at Sea, Arreſts, Reſtraints, and "Detainments of all Kings, Princes, and People of what Na-"tion, Condition, or Quality ſoever; Barratry of the Maſter and "Mariners, and of all other Perils, Loſſes, and Misfortunes, "that have, or ſhall come to the Hurt, Detriment, or Damage "of the ſaid Goods, or any Part thereof. And in Caſe of any "Loſs or Mis ortune, it ſhall be lawful to the Inſureds, their "Factors, Servants, or Aſſigns, to ſue, labour, and travel for, "in, and about the Defence, Safe-guard, and Recovery of the "ſaid Goods, or any Part thereof [*a*]."

[*a*] By the Ordinance of *Hamburgh*, it appears that it was judged proper to leave out, in the new Form of a Policy, N°. 1012, the aforementioned Liberty about the Salvage, which was in their former Policies. According to *Langenbeck*, Page 379, in Caſes of Damage, it thus enacts: "We hereby impower you, and particularly deſire of you, or your Fac-"tors, to act for us, be it with Profit or Loſs, in ſaving, and benefiting "the Goods." The *Amſterdam* new Policy, N°. 574, and the *Stockholm*, N°. 1207, give ſtill more Power to the Inſureds in a Salvage than the *London* Policy does. They ſay, "That it ſhall be lawful for them, when "neceſſary, to act and ſell the Goods ſaved, and diſtribute the Produce, without their Inſurers Conſent;" that the Inſurers ſhall pay the Charges, whether any thing be ſaved or not, and that to Accounts given upon Oath by him that drew them no Objection ſhall be made.

Riſks for which the Inſurers are not liable.

§ 49. However a Diſtinction is every where to be made between the Damage that may happen to inſured Goods on board a Ship, and that which occurs by an actual Shipwreck; for this laſt Damage is without Doubt to be made good by the Inſurers, but the former may proceed from their bad Stowage, or their being put in a Place expoſed to Wet; from a Deficiency in caulking of the Decks, or otherwiſe; which Faults the Ship ought to be anſwerable for [*a*]. But it is almoſt become a general Cuſtom, for Maſters, as ſoon as they arrive in any Port, to go on Shore and proteſt againſt any Damage that in the Voyage may

may have happened to their Cargoes, by reciting any bad Weather they met with, and any trifling Sea they ſhipt; which Sort of Proteſts ought not to be regarded in ſuch a Light as to free the Maſter from a further Examination: at leaſt, when the Owners of the Goods have any Reaſon to believe that their Damage proceeded from the Ship, or the Fault of the Maſter, they may at all Times bring him, and his Crew, to declare upon Oath, what they knew of the Ship's Condition, and in what Place the damaged Goods had been ſtowed. However, Inſurers ought not to avail themſelves of the Pretence for not paying, that the Damages were admitted for the Inſured abroad, it being ſufficient that the Tranſactions relating to them have been made out in a regular and cuſtomary Way. But the Inſurers, after paying, may oblige the Inſured to ſue for what carries an Appearance of Reaſon with it [*b*], at the Expence and Charge of the Inſurers.

[*a*] The Ordinance of *France* N°. 690, ſays, "Nor ſhall the Inſurers be obliged to bear the Loſſes and Damages happening to Ship, and Goods, thro' the Maſter and Mariners Fault, except by the Policy they be engaged for the Maſter's Miſdemeanours:" which at preſent is not uncommon in *France*, as appears by a *Havre-de-Grace* Policy N°. 770.

[*b*] By the old Ordinance of *Florence* of 1523, and in the ancient Form of its Policies N°. 11, and in the new ditto N°. 18, it is expreſſed, "That the Inſurers ſhall be liable for the Fraud of the Maſter, except for ſuch Damage as proceeded from bad Stowage, or undue Entries, and Non-payment of the Cuſtoms." By N°. 14. of that Ordinance "If Goods were ſtowed on the Deck, with Leave of the Inſured, then the Inſurers ſhall not be liable for the Damage they received there; but if the Maſter ſtowed them on the Deck, without Leave of the Owner or Perſon who had the Inſurance made, the Inſurers ſhall be obliged to pay; but they may have their Redreſs againſt the Maſter." And in N°. 15, it is well expreſſed, that they ſhall firſt pay, and may afterwards go to Law.

§ 50. In *Spain*, when Goods are ſhipt upon Freight for the *Weſt-Indies*, it is cuſtomary to pay the Ship 12 $\frac{5}{6}$ Rials of Plate, for each *Dozao* which ſuch Goods ſhall contain of cubical Meaſure: and for that Money, or Premium, ſo paid, the Ship is obliged to make good, whatever Damage may appear in the Goods at their unloading Port. Hence there cannot be greater Care taken in any Country than in *Spain*, to have all Places where Goods are ſtowed, ſo well ſecured that it is very difficult

In the Navigation of Ships from *Cadiz* to *America*, the Ship is bound to make good what Damages the Merchandize receives within Board.

cult for Damage to reach them; for nothing exempts the Ship from making good the Damages received. Nevertheleſs the Ship is not obliged to ſatisfy for Jettiſons, Unloadings to paſs over Flats, or other common Riſks that are to be borne as groſs Averages, which fall jointly on the Veſſel, Cargo, and Freight: *See* Ordinance of *Spain*, N°. 80. It ſeems however a very ſtrange Cuſtom, that for a Bale of Gold and Silver Stuffs, meaſuring twenty Palms, and worth perhaps 4000 Dollars, no more Premium is paid to inſure the Damage, than for a Bale of the ſame Dimenſions, of Serges, not worth above 200 Dollars. But notwithſtanding the utmoſt Precaution is uſed in ſecuring the *Spaniſh* Ships, as already hinted, it now and then happens that they have great Averages to pay. If therefore they would introduce the Cuſtom of having the Value and Contents of each Bale declared, when meaſured, and the Premium for them paid accordingly, it would be practicable to get ſome Counter-Inſurance made againſt the Riſk they run; which has more than once, though not often indeed, been the Cauſe of a Maſter's not being able to comply with his other Engagements, ſince ſuch Damages, or their Value, may be detained out of the Freight, and have a prior Right of Payment, to any other Claims.

What Damages Inſurers ought to pay for Loſs of Cables, Maſts, &c. And what not.

§ 51. When a Ship runs aſhore, there is no Doubt but that the Inſurers on her are obliged to pay for whatever Damage ſhe receives in her Hull, Maſts, or Breach of any Part by her Stranding: but then in calculating the Value of the Things loſt or damaged, in order to replace or reinſtate them, proper Allowances ought always to be made for the Wear of the Things loſt, and conſequently for the Difference in Value between them and new ones: And this Appraiſement ſhould be made upon Oath by ſuch Shipwrights, Rope-makers, Sail-makers, and Ship's Maſters, as are known to be Men of Experience, and Probity; for it is a ſettled Doctrine that all Appurtenances belonging to a Ship ought to be made of the beſt Materials, and ſtrong enough to hold good, and reſiſt any Force of Storms, which will often be met with in the common Courſe of a Voyage. Were Inſurers obliged to pay for every Cable and Rope that breaks, and for every Sail that ſplits, or blows to Pieces, there would be no other Way of inſuring upon Ships, but free of all particular Averages. We nevertheleſs are of Opinion that the Inſurers are liable for whatever Loſs or Damage may accrue to a Ship by the Maſter's extra-

extraordinary Endeavours for her Preſervation: For Inſtance, if to avoid, or eſcape from an Enemy, a Ship anchors in an open Road, under the Protection of ſome Caſtle, and there parts her Cable, it ought doubtleſs to be conſidered as a groſs Average. Moreover, if the Maſter of a Ship, finding her too near a Lee-Shore, apprehends that to ſave his Veſſel he muſt carry ſo much Sail as to risk the carrying his Maſts by the Board, and to ſave them, deliberately comes to an Anchor; in this Caſe, ſhould a Cable be loſt, if it is not to be conſidered as a groſs Average, it ought at leaſt to be made good by the Inſurers upon the Ship. And agreeably to this a Regulation was made at *Hamburgh* in 1725, by the Diſpatcher of Averages, *Jurgen Greve*, in a Caſe recited by *Langenbeck*, Page 225, of the Ship *Juffrowe Johanna*, which being in Danger, the Maſter to ſave her, anchored by *Hillig Land*, where ſeveral of his Cables parted. We find in a Treatiſe wrote by *Quintin Van Weyſten*, about 1563, whoſe Judgment is every where deſervedly held in the greateſt Eſteem; that if the Maſter of a Ship has adviſedly dropt Anchor in rocky Ground for her Safety, then the breaking or loſing his Anchors and Cables, though it cannot properly be deemed a groſs Average, ought to be recompenſed as a good Piece of Service.

We remember alſo that at *London*, in certain Caſes, where it was proved that Ships endeavouring to keep clear of a Lee Shore, had new Sails blown away, and Cables parted by anchoring in open Sea, to avoid driving aſhore, the Loſſes being occaſioned by ſtriving to preſerve the whole, were made good by the Inſurers, whoſe Intereſt it always is (as well as for the common Advantage) to make it the Maſter's Intereſt to ſpare nothing, in ſuch extraordinary Caſes, to ſave the Ship from ſtranding, by carrying out freſh Cables when others have parted. If a Maſter, being himſelf a Part Owner in the Ship, and fully inſured, knows that he ſhall not be paid for the firſt Cables he may carry out, and loſe by their breaking, he is diſcouraged from risking others, though with the Appearance of ſaving his Ship, as he may think it more for his Advantage to let her go aſhore on the firſt Cable's parting, becauſe the Inſurers muſt then pay him the full Inſurance; whereas if ſhe were ſaved by veering out other Cables, he would loſe the Value of thoſe Anchors, or Cables that were loſt, or broke before: We muſt add, that as it is for the common Good, and for the particular

Intereſt of all Inſurers, that Ships ſhould not go to Sea without good Cables, Sails, &c. thoſe Cables that are not ſufficiently ſtrong for a Ship to ride with, in the uſual loading Places, or any Sails blown to Pieces by ſtormy Weather in the common Courſe of a Voyage, ſhould not be paid for by the Inſurers; as it might be an Incitement for Maſters not to go without good ones.

When Things are loſt for which the Inſurers are liable to pay, the Queſtion naturally ariſes, how, and at what Value, they ought to make Satisfaction? for the Value they had at the Place from whence the Inſurance commenced and the Premium was paid, might not be ſo much, as the Purchaſe of others in lieu of them. Our Opinion in this Caſe is, that the Inſurers ſhould not be reſponſable for the whole of what the replacing them may coſt, but that a Part of it ought to be borne by the Owners of the Ship, in Proportion to what it could be proved they would be benefited by the Voyage, or what their Freight exceeded the Outſet inſured in the Ship's Valuation. Suppoſe a new-built Ship of 600 Tons bound from *London* to the *Eaſt-Indies*, amounts, with all Stores, Proviſions, and advanced Money to the Sailors, in the whole, as fitted for Sea, to 10000 *l.* and is inſured in full for that Sum: In her Return ſhe happens to loſe her Foremaſt, and Bowſprit, by crowding Sail upon a Lee Shore, which to replace on the Spot, coſt 1500 *l.* though in *London* they might have been bought for 500 *l.* We are of Opinion that in this Caſe, if the Home Freight on Goods aboard amounted to - - - - - £. 8000

There might be deducted for Victualling and Wages of 60 Hands, for 6 Months we ſuppoſe wanting to accompliſh the Voyage £. 900
Other Charges - - - 300
1200.

Riſk for the Owners - - £. 6800

The moſt equitable Way then would be to make

The Inſurers bear for	£. 10,000	of the above	£. 892 $\frac{144}{168}$
The Owners for	6800	1500 *l.*	607 $\frac{24}{168}$
			£. 1500

Several

Several Arguments may however be alledged to excuſe the Inſurers from being liable for more than the Value of the 500*l.* which the Maſt, *&c.* would have coſt in *London*, concerning which the Reader is referred to what appears in *Caſe* 20, N°. N, O.

§ 52. In *London*, where the *Eaſt-India* Company hire all the Ships they employ in their Trade from private People, there is a general Condition in the Charter-Parties, that every Ship ſhall make good all Damages that may happen to the Goods on board her; and farther, that the Company ſhall contribute nothing to any Damage the Ships may receive by either cutting or carrying away Maſts, loſing Cables, and Anchors, or any other direful Effects of tempeſtuous Weather: So that what general Cuſtom has made a groſs Average to be borne by Ship and Cargo, falls ſolely on the Owners of thoſe Veſſels the Company employ: And the Loſs of Cables, Anchors, Sails, and Maſts, which cannot be replaced in *India*, but on much more coſtly Terms than in *England* (where the Premium of Inſurance has only been paid on its Value) has occaſioned great Diſputes and Controverſies between the Inſurers and Owners of thoſe Ships; ſo that of late ſome Inſurers will not underwrite, without the expreſs Condition of being free from all Average. Conditions between the *Eaſt-India* Company, and Owners of Ships, about Damages and Averages.

§ 53. Whatever the Maſter of a Ship in Diſtreſs, with the Advice of his Officers and Sailors, deliberately reſolves to do, for the Preſervation of the whole, in cutting away Maſts or Cables, or in throwing Goods over-board to lighten his Veſſel, which is what is meant by Jettiſon or Jetſon, is, in all Places, permitted to be brought into a general, or groſs Average; in which all concerned in Ship, Freight, and Cargo, are to bear an equal, or proportionable Part, of what was ſo ſacrificed for the common Good, and it muſt be made good by the Inſurers in ſuch Proportions as they have underwrote. However, to make this Action legal, the three following Points are eſſentially neceſſary. General, or groſs Average.

1ſt, That what was ſo condemned to Deſtruction, was in Conſequence of a deliberate and voluntary Conſultation, held between the Maſter and Men.

2dly, That the Ship was in Diſtreſs, and the ſacrificing the Things they did was a neceſſary Procedure to ſave the reſt. And

3dly,

3dly, That the ſaving of the Ship and Cargo was actually owing to the Means uſed with that ſole View.

If the Ship, after having made Jettiſon, or cut away her Cables, Maſts, *&c.* at one Place, is ſtranded at another, each concerned muſt bear his own Loſs, or remain poſſeſſed of what is ſaved of his Property. For Inſtance: A Maſter bound for *Cadiz*, is obliged by a Storm in the *Downs* to cut away two Cables, and get to Sea; by which Means he cleared his Ship from the great Danger he was there expoſed to; but he afterwards had the Misfortune to run his Ship aſhore near *Plymouth*, where the major Part of his Cargo was ſaved. In this caſe the the Owners of the Ship have no Right to demand that the Proprietors of the Goods ſaved ſhall contribute towards the Cables and Anchors left in the *Downs* notwithſtanding the imminent Danger of loſing the Ship on the *Goodwin* Sands (where there was no Probability that any Thing could be ſaved) which could only be guarded againſt by the Method taken of cutting away the two Cables. From hence it follows, that if nothing had been ſaved of the Cargo, and the Cables and Anchors had afterwards been recovered, they would remain the ſole Property of the Owners of the Ship, at leaſt till the Proprietors of the Goods had actually paid for, or contributed towards the Loſs of thoſe Cables, and Anchors. This is an old Law, and the Cuſtom of many Places [*a*]. If a deep-loaden Ship be obliged to take out a Part of her Cargo, previous to her paſſing ſome Shoals or Flats, which without ſuch Lightening hinder her getting to her deſtined Port, and the Lighters, or Boats in which the Goods of ſuch Cargo are put, ſhould periſh, the Owners of the Goods that remain are to bear an equal Proportion of the Loſs; but if the Ship ſhould be loſt, and the Lighters ſaved, the Owners of the Goods ſo preſerved ſhall not only remain poſſeſſed of thoſe Goods, but alſo ſhall contribute nothing towards the Loſs of the Ship and what was in her. This Difference is founded on this; That lightening of the Ship was in conſequence of a deliberate and voluntary Determination, and for the Good of the whole; whereas the Lighters being ſaved, and the Ship loſt, was owing to an Accident, no ways proceeding from a Regard to the whole, but a Caſe ſimilar to the ſaving Goods lying neareſt at hand when a Ship is run aſhore.

Let

Let us go ſtill farther, and ſuppoſe, That a Ship running on a Bank throws overboard all her heavy Stores, and Part of her Cargo, by which Jettiſon ſhe gets clear, and returns to Sea; yet proves ſo leaky, that ſhe is obliged to make for, and take Shelter in the next Harbour, where upon Examination ſhe is found in ſo bad a Condition, as not to be repaired, and therefore is condemned as unfit to proceed on the Voyage. In this Caſe, notwithſtanding her Loſs proceeds from her having been aſhore, yet as ſhe got clear by the aforeſaid Jettiſon, and the Remainder of the Cargo eſcaped, and arrived ſafe in Harbour; that which was ſo ſaved, muſt contribute to the Loſs of what was thrown overboard. But yet whatever Damage the Ship ſuſtained by her running a-ground, or the Damage or Loſs any particular Goods ſuffered by this unhappy Accident, muſt be borne by the Ship's Owners, and by the Owners of the Goods, without any Pretenſion of Indemnification from the Cargo ſaved; their Redreſs being only againſt the Inſurers.

[*a*] Laws of *Wiſby*, *Art.* 55.
Statutes of *Hamburgh* in 1603, *Tit.* xvi. *Art.* 9.
Lex Mercatoria of *Malynes*, printed 1622, *cap.* 25.
Ordinance of *Antwerp* in 1563, N°. 29.
Ordinance of *France* in 1681, N°. 766, 767.
Ordinance of *Rotterdam* in 1721, N°. 302.

§ 54. In the Collection intitled *Conſolato del Mare*, which contains ſome old Laws of *Barcelona*, partly taken (as *Verwer* ſhews, Pages 54, 55.) from thoſe of *Wiſby*, it is ſaid, *cap.* 94, "That in caſe of a Jettiſon, the Ship ſhall contribute for half "of its Value: But (*cap.* 96.) if the Maſter receives Freight "for his whole Cargo, the ſame ſhall be included in the general "Contribution." For how much, or for what Value, the Ship is to contribute in caſe of a general Average,

In the Ordinance of *Philip* II. made at *Antwerp* 1563, (ſee N°. 25.) it is ſaid, "That the Owners of the Cargo ſhall have "the Option to make the Ship contribute either for her real "Value, or for her whole contracted Freight;" which, as *Verwer* affirms in his *Annotations* upon this Ordinance (Page 118.) hath been practiſed in the Northern Parts of *Holland* ever ſince the moſt antient of their own Sea Laws have been known, which are the Decrees, or Judgments of the City of *Dam*, or *Damme*, collected, according to the aforementioned Author's Con-

Conjecture, before the Year 1300, and ſtill in Uſe, as appears by the Ordinance of *Rotterdam*, N°. 322.

By the *Recopilacion de Leyes de las Indias* in *Spain*, N°. 80, and the Statutes of *Genoa*, N°. 137, the Ship contributes both for the whole of her Value, and Freight. At *Leghorn* the Cuſtom is, (as appears by *Caſe* 24, I.) That the Ship ſhall contribute for one Half of her Value, and one Third of her Freight.

By the Ordinance of *Lewis* XIV. in *France*, N°. 579, both Ship and Freight are to contribute for one Half.

The Ordinance of *Coningsberg*, N°. 855 to 861; of *Hamburgh*, N°. 981; and of *Copenhagen*, N°. 1284, all agree that the Ship is to contribute for the whole of her Value and Freight; which Value is well explained by the ſaid Ordinance of *Hamburgh*, N°. 982, which directs that the Value of the Ship ſhall be no other, than what ſhe was really worth in the Condition ſhe arrived: And that from the Freight a Deduction ſhall be made of the Mens Wages, Pilotage, and ſuch other Charges, as are diſtinguiſhed there by the Denomination of petty, ordinary, or common Average, of which it is cuſtomary every where for the Cargo to bear two Thirds, and the Ship one. The Difference of the Ordinances of ſeveral States in the Manner of ſettling the Ship's Contribution is eaſily reconciled, for it proceeds from the ſame Grounds, *viz.* The Impoſſibility of employing a Ship in any Voyage, without Wear and Tear, and conſequently loſing of that Value ſhe had when ſhe commenced it: and the Suppoſition that one Half, or one Third of her Freight, would be expended in paying Mens Wages, and other Charges. The abovementioned Law of *France*, that the Ship ſhall contribute for a Moiety of her Freight, as well as her Value, is to be underſtood only of the groſs Freight (ſee *Caſe* 8, F. *Caſe* 9, G.) The Ordinance of *Coningsberg* mentioned above is defective both in this Point, and the Method of valuing the Veſſel; and wants Explanation. The right and juſt Way of calculating is to be found in the laſt-named modern Ordinance of *Copenhagen*, which enacts that the neat Freight, and full Worth of the Ship (after making proper Allowances for what ſhe is diminiſhed in Value by the ordinary Courſe of the Voyage, and the extraordinary Accident that

that gave Occaſion for the general Average) ſhall contribute their Share or Part in a general Average.

§ 55. The Sea Laws of Trading Countries differ greatly in fixing the Prices, at which Goods thrown overboard ſhall be made good, and for what Value thoſe ſaved are to contribute. According to the old Laws in the *Conſolato del Mare*, cap. 95; the Statutes of *Genoa*, lib. iv. cap. 17; (N°. 148 in this Work) the Ordinance of *Rotterdam*, N°. 325; of *Stockholm*, N°. 1167; and of *Copenhagen*, N°. 1285, if the Accident which occaſioned the general Average happened before half the Voyage was performed, the Jettiſon is to be eſtimated at the Price it coſt; but if after, then at the Price which the reſt, or ſuch like Goods ſhall be ſold for, at the Place of Diſcharge; Freight, Duties, and ordinary Charges deducted. But the new Ordinance of *Amſterdam*, in 1744, (N°. 527.) ſeems to differ ſomething from this Cuſtom, ſaying, That only in Caſes of Detentions and Ranſoms the Contributions ſhall be made in thoſe two different Manners of Valuation. The Ordinance of *Antwerp* in 1563, by *Philip* II. N°. 25; the *Recopilation de las Leyes de Indias*, N°. 80; the old Statutes of *Hamburgh* of 1603, p. 2. tit. xvi. art. 2. the Ordinance of *Lewis* XIV. N°. 753; and of *Conings-berg*, N°. 860, all agree, That the Goods ſaved and loſt ſhall be rated at the Market Price which thoſe ſaved ſell for; and a Contribution be made accordingly, after deducting Freight, and Charges. But the new Ordinance of *Hamburgh* in 1731, N°. 982, deviates from their former Statutes in this Particular, by ordaining that in Caſes of general Average the Goods ſhall be eſtimated according to their Invoice, with the Addition of all Charges, except Premium of Inſurance. Now this Difference naturally gives riſe to the following Queſtion, *viz.* Which is the juſteſt Way, to reckon the Goods according to their Value at the Place they came from, or according to their Value at the Place where they are landed? In Anſwer, we think there is no manner of doubt, but that if the Ship arrived in Safety at her deſtined Port, both the Goods thrown over-board, and thoſe delivered, ought to be valued at the Price they might have yielded, or did yield there, whether the Jettiſon was made before they came half the Way, or after: For if the Goods ſaved by this Jettiſon arrived at the Place they were deſtined for, and there produced double what they coſt, it would be unreaſonable

For how much, or at what Value, the Goods are to contribute, in caſe of a general Average.

that one half of ſuch Produce ſhould contribute nothing to what was caſt away: nor would it, on the contrary, be reaſonable to make the Goods ſaved (if they came to a loſing Market) pay for more than they produced: or ſuppoſe they were ſuch as had ſuffered by their own periſhable Nature, what Reaſon could there be to make them contribute *ad valorem* of their Coſt? It appears by *Malynes*, *Lex Mercatoria*, cap. 26, that this Diſtinction was likewiſe obſerved in *England* in 1622, the Time in which he wrote, of rating the Goods at prime Coſt, if the Jettiſon happened before half the Voyage was performed; and, if after, at the Price that the reſt, or like Goods ſold for, at the Place of Diſcharge. An Inſtance happened lately, wherein the Concerned agreed that the Goods ſaved, and thoſe thrown overboard, ſhould be rated at firſt Coſt. See *Caſe* 10, E. As there is no Law in *England* that poſitively directs what Method is to be obſerved in theſe Caſes, the Inſurers, as well as the Inſured, are bound by the Determination of Referees. (Vide *Caſe* 8, O.) It muſt here be noted, that the Inſurers, by the expreſs Words of moſt Policies, impower the Inſured to ſue, labour, and travel, in, and about the Defence, *&c.* of what they inſure.

Molloy, in his Treatiſe *De jure maritimo*, remarks that in his Time the general Cuſtom was, That the Goods ſaved, and thoſe loſt, ſhould be eſtimated at the Rate which thoſe ſaved were ſold for, Freight and other neceſſary Charges deducted. And this, by what we have ſeen tranſacted in ſuch Affairs, ſeems to be the prevailing Cuſtom now in *England*.

Accidents may happen that may cauſe a Contribution before the Ship can reach her deſtined Port. When a Veſſel has been obliged to make a Jettiſon, or by the Damages ſuffered ſoon after ſailing is obliged to return from whence ſhe came; the neceſſary Charges of her Repairs, and the replacing the Goods thrown overboard, muſt be proportioned by a general Average. See *Caſe* 12. In like manner, when Ships are in Time of War detained in foreign Ports, and expoſed to great Expences in procuring their Releaſe; there is no other Way of ſettling a Contribution for the Payment of thoſe Charges, but on the firſt Coſt of the Cargo. See *Caſe* 36. U. With regard to ſome Sorts of Goods that arrive whither they were bound after a Jettiſon, it may be leſs inconvenient for all the Concerned to ſettle,

and

and make a Repartition of the Loſs upon the Coſt of the whole Cargo, than to calculate upon a forced Sale, or an inaccurate Appraiſement. And this we apprehend was the principal Reaſon why the Magiſtracy of *Hamburgh* made their new Ordinance differ from the old one. However, none of theſe Rules are to be underſtood to be without Exception, or to want no Amendment; for though a Law may ordain that each Owner ſhall contribute proportionably to the Coſt of his Goods; yet if he can prove that they were ſpoiled, or had fallen conſiderably in Value after ſhipping, it doth not ſeem equitable to compel him to any other Contribution than *pro rata* of what his Goods are worth at the Time of ſettling the Average. And this we apprehend induced the *States General* in their new Ordinance of Inſurances at *Amſterdam* in 1744, N°. 553, to inſert the following Clauſe; " Whereas the Accidents from whence " general Averages ariſe, are ſo variable in their Circumſtances " that no Ordinance can well provide for them all; the Deci- " ſion of them ſhall be left to the Commiſſioners of the Cham- " ber of Inſurances, to regulate and determine according to " Law, Reaſon, and Equity."

In a Codex of Commercial Laws enacted at *Bilboa*, *anno* 1738 (which is come too late to our Hands to be quoted in all the proper Places of this Eſſay) Chap. 21. treating in what Manner groſs Averages are to be regulated, it is ſaid, " That " the major Part of the Concerned ſhall have it in their Choice " to regulate the Value of the Goods by the Price appearing in " the Invoices, or by what they ſhall be computed at by an " Appraiſement made conformable to their current Price at the " deſigned Port, Regard being had to the Condition they come " in, and their Quality; but that a Repartition of no Part of " the Average ſhall be made on the Freight without the " unanimous Conſent of all the Concerned and the Captain."

Note, The Amount of a groſs Average may now and then be ſo ſmall, that the Concerned ſhall chuſe rather to make it good as a ſingle Average (that is one Third on the Ship, and two Thirds on the Freight) than to cauſe Appraiſements to be made of all the Merchandizes, or to bring all the Invoices together.

For how much, or at what Value Gold and Silver ſhall contribute to a general Average.

§ 56. Gold and Silver at moſt Places contribute to a general Average according to their full Value, and in the ſame Manner as other Merchandize [*a*]: but at *Amſterdam* it has been a Cuſtom from Time immemorial, and ſtill continues, that Gold and Silver ſhall only contribute for half their Value, conformable to the ancient Law of *Wiſby*, (*Art.* 38. § 3.) which ſays, that in Caſes of Jettiſon, of two Pence which were aboard, only one ſhall contribute. In *Molloy*, *De Jure maritimo*, it is aſſerted, (*Cap.* 6. § 4.) "That in general Money, and even Jewels, "Cloaths, and all things in the Ship, (except a Man's Apparel "in Uſe, or Victuals, *&c.* put on board to be ſpent) are liable "to Average and Contribution;" and *Sect.* 14. "That a Maſter, or Purſer ſhall contribute for the Preſervation thereof; alſo the Paſſengers for ſuch Things as they have in the Ship, be "they precious Stones, Pearls, or the like; and Paſſengers that "have no Goods in the Ship, yet in regard they are a Burthen "to her, an Eſtimate is to be made of their Apparel, Rings, and "Jewels, towards a Contribution for the Loſs." In which Aſſertion we apprehend he has enlarged upon *Malynes* from what he found in the Annotations of ſome foreign Authors on the *Rhodian* Laws, which he ſays were introduced into *England* by *William* the Conqueror, and *Henry* the Firſt, though we ſuppoſe he never knew them to have been exactly followed at *London:* at leaſt in our Time we do not remember ever to have met with any Regulation of a general Average, where the Apparel and Jewels of Paſſengers were brought into the Contribution, as it is a common Rule, that what pays no Freight, pays no Average. The Senator *Langenbeck*, quotes (*Page* 178.) an old Law of *Lubeck*, which ſays, That if any Goods ſhould happen to be thrown overboard, which the Maſter, out of Friendſhip to their Owner, carried Freight-free, he ſhall not be anſwerable for their Loſs. He alſo (in the Introduction to his Book) cites a Law, made by the City of *Hamburgh* before 1276, which ſays; If a Perſon carries any Money with him in the Ship, and declares to the Maſter his Indifference about any Jettiſon, and that his Caſh ſhall ſink or ſwim with him; he ſhall not be obliged to contribute for it, towards any thing that may be thrown over-board. But in the reviſed Statutes of that City, of 1603, in the Chapter of Jettiſons, *Art.* 3, it is ſaid; If any Perſon carries either Money, Pearls, or Jewels with him in the Ship, and a Jettiſon happens to be made, whe-

whether he diſcover it, or no, he ſhall contribute to the Loſs, equally with others who have Goods in her: But, as the ſaid *Langenbeck* very juſtly obſerves in his Remarks on this Article, how can it be diſcovered, if the Perſon will conceal it? It is now a Cuſtom for Paſſengers to ſtipulate to pay a certain Sum for their Paſſage, Diet, and Carriage or Freight of their Baggage: The Maſter never enquires on theſe Occaſions whether their Wearing Apparel be of much, or little Value, nor what Rings, Watches, or Money they have about them [*b*], ſo that he is not reſponſable for any of them: but we are of Opinion, that for what Paſſage Money the Maſter receives, he is to contribute; tho' the Ordinance of *Copenhagen*, N°. 1284, declares that Paſſage Money ſhall have the ſame Exemption as Sailors Wages. Upon the whole, no Paſſenger ought to conceal from the Maſter ſuch Things as he would not carry without a valuable Conſideration, if he knew of them. For Inſtance: In Voyages from *Cadiz* and *Liſbon*, where the Carriage of Gold and Silver makes a great Part of the Ship's Profit, or Freight, if a Perſon, under the Cloak of going Paſſenger, ſhould conceal, either in his Trunks, or about his Body, any ſuch conſiderable Sum of Money, or Jewels, as would not be ſuffered without paying a Freight; he muſt, when diſcovered, not only ſatisfy the Freight, but alſo contribute to any Jettiſon. It is cuſtomary in *London*, and moſt other Countries, for the Proprietors of whatever Gold, Silver, or Jewels pay Freight in Merchant-Ships, to contribute to a Jettiſon for their full Value: For, the Maſters being obliged, by all Sea Laws, to throw out, in Caſe of Need, what is heavieſt, and of leaſt Value [*b*], and the Worth of ſuch precious Commodities being known, the Care of them will be encreaſed in Proportion to their Worth, to prevent their being thrown over-board promiſcuouſly with other Things: and hence their Preſervation redounds to the common Benefit. There is a Difference nevertheleſs when theſe rich Wares come by King's Ships, or Packet Boats, as ſuch Veſſels never pay nor receive any Average; ſee *Caſe* 10. E. The Reaſon is, in Goods belonging to his Majeſty all his Subjects in general are concerned, wherefore for any particular Loſs of them no particular Contribution is neceſſary, becauſe it is ſupplied by the general Contribution of the whole Community.

And

As every Charter-Party made with the *Eaſt-India* Company, has the Condition inſerted, That the Freighters ſhall not be obliged to make good any Damage that the Ships may ſuffer; ſo it is reaſonable to apprehend, that whatever Silver is ſent out, or Gold, and Diamonds brought home, on Account of private Perſons, ſhall alſo be free from any Sort of Contribution towards a general Average.

[*a*] The Ordinance of *Rotterdam*, N°. 318, ſays, that in the general Average, not only the principal Cargo, but alſo the Cloaths, Gold, Silver, and Jewels ſent on board in Trunks, are included. The Ordinance of *Coningſberg*, N°. 858, directs, that Jewels, Rings, Pearls, Money, wrought Plate, and even Proviſions, and Ammunition (which are in moſt Places exempted) ſhall contribute; but ſpeaks nothing of Paſſengers Cloaths.

[*b*] The Ordinance of *Antwerp*, N°. 26, ſays, Coin ſhall be eſtimated, and pay according to its intrinſick Value; but whatever any Perſon ordinarily carries about him (except Bags of Jewels, Gold or Silver) ſhall not contribute in an Average.

Particulars that are admitted into general or groſs Averages.

§ 57. All extraordinary Charges, proceeding from Endeavours to preſerve the Ship, and Cargo, and the Damages reſulting from the Meaſures taken for that Purpoſe, conſtitute, and are commonly accounted, a general, or groſs Average, as the Ordinance of *Hamburgh* explains it, N°. 981; of which Expences, and Damages, that Ordinance (N°. 983.) particularly enumerates,

1. All Damage that a Ship ſuffers in her Apparel, and Cargo, in defending her againſt an Enemy, Privateer, or Pirate.

2. Extraordinary Pilotage, and Charges which a Ship ſhall be at, on ſpringing a Leak, or being obliged to take Shelter in a Harbour, by having received ſome other Damage.

3. The neceſſary Expences for Aſſiſtance to get clear, when a Ship is run aground, or the Charges of lightening her on ſuch Occaſions.

4. Whatever a Maſter may have agreed to pay for the Ranſom of his Ship, and Cargo, to any Privateer, or Pirate, when taken.

5. What may be expended in the Cure, and extraordinary Attendance on either Officers, or Sailors, wounded in Defence of the Ship; and alſo what Rewards may be promiſed by Articles to the Widows and Children of thoſe who may unfortunately loſe their Lives in the Engagement.

6. The

6. The extraordinary Gratuity which a Maſter may have promiſed his Men, to animate them to a ſtout Defence, or Salvage of the Veſſel.

7. All Maſts, Cables, and Rigging, either ſlipt, cut, or carried away; and all Sails, or other Appurtenances, torn, or ſpoilt, in order to ſave the Ship.

8. All that is thrown over-board, or damaged by a Jettiſon for the Ship's Safety.

9. The Value of any Goods, or Stores, taken away, or plundered by Privateers, or other commiſſioned Ships, with a Promiſe to pay for them.

10. Charges occcſioned by any extraordinary Quarantaine, and other unavoidable Accidents.

And, by the Ordinance of Copenhagen, N°. 1275,

11. Whatever Holes are cut in a Ship, in order to have the Water run out, or conveyed to the Pumps, when by ſhipping a Sea, ſhe is filled.

12. The Ship's Boat, if cut away from its Faſtenings, and ſet adrift.

13. The Expence of getting a Ship afloat, after running aſhore, and that of repairing the damaged Works under Water.

14. Goods loſt by being put into any other Veſſel, or Lighter, and there periſhed, when otherwiſe they muſt have been thrown over-board.

By the ſame, N°. 1276,

15. The Charges which a Maſter pays for bringing his Ship to a Place of Safety, on being chaſed by an Enemy; or if ſhe lay in a dangerous Part, waiting for a fair Wind, or Convoy.

By Langenbeck's Annotations, *Page* 198,

16. The Charges of Lawyers, Attorneys, and Proctors, for reclaiming Ship, and Cargo.

17. Travelling Expences of Perſons concerned in the Solicitation of it.

18. Gratuities given on ſuch Occaſions.

19. Proteſts.

20. Tavern Expences at Meetings about it.

21. Poſtage for Correſpondencies.

22. Commiſſions to Merchants or Factors, who have the Direction and Care of it.

23. Brokerage.

24. Charges

24. Charges for the Hire of Anchors, Cables, *&c.*

25. Lighterage for the unloading, and Demorage.

26. Horſe, Cart, and Waggon Hire, when Goods are carried over Land.

27. Gratuities to Lords of Manors, and Proprietors of Lands, for Leave to dig a Ship off, that is drove aſhore above High Water Mark, either by a Storm or Tide, as happened in 1703, near *Gluckſtat*; and the Charges in performing it.

28. Coſt of Repairs, to Carpenters, Block-makers, Sail-makers, Smiths, *&c.*

29. Charges of laying in freſh Ballaſt.

30. Rewards promiſed to the Sailors more than their Wages, for extraordinary Labour for the Ship's Preſervation.

31. Intereſt, Premium of Inſurance, and Commiſſion on Monies diſburſed.

32. Charges of victualling, and guarding the Ship during her Detention.

33. Coſt of inſpecting Cuſtom-houſe Regiſters, to find out who may be concerned, or Proprietors.

By *Caſe* 5.

34. Charges (in *Roman Catholick* Countries) of carrying the Holy Virgin home, and offering Thanks.

35. Charges of ſending Advice-Boats from diſtant Places.

By *Caſe* 13.

36. For Surgeons, and Phyſicians Fees, for attending thoſe that became ſick, or were wounded, in their Endeavours for the Preſervation of the Ship and Cargo.

37. For Appraiſers, and for the Attendance of Notaries, and Magiſtrates.

By *Caſe* 27.

38. For Entrance into *Dover* Pier; Detention there for ſeveral Tides; King's Surveyors; Cuſtom-houſe Officers; Light Money, *&c.* In ſhort, whatever Charges may occur for the joint Intereſt of the Concerned in Ship and Cargo, which can hardly be all enumerated; and of thoſe already mentioned ſome are not common to all Caſes: It would therefore require a very nice Examination, and Scrutiny, to admit them abſolutely as laid down, in general Averages. When in the *Ham-*

Hamburgh Ordinance, N°. 983, it is ſaid; That Charges occurring by any extraordinary Quarantine, or unavoidable Accidents, ſhall be brought into a general Average; it muſt only be underſtood of ſuch extraordinary Charges, as accrued from a voluntary Endeavour for the better Security both of Ship and Cargo; but not, as in the ſame Ordinance, N°. 901, is juſtly diſtinguiſhed, for Sailors Victuals and Wages, when they are under a Neceſſity of performing Quarantine with the Ship, in which caſe the Maſter would have been obliged to maintain and pay them though his Veſſel had arrived only in Ballaſt. This is very different from a Detention by foreign Powers, who in War Time ſeize Ships at Sea, and carry them into their Ports to ſearch for an Enemy's Property; when the continued Employment of the Seamen is with the ſole View of being enabled to proſecute the Voyage immediately on the Ship's being cleared *. Mr. *Langenbeck* very judiciouſly enlarges the Diſtinction, by obſerving, that when a Ship is accidentally ſurprized and frozen up by a Froſt's ſetting in at *Peterſburgh* ſooner than expected, Sailors Wages and Victualling for the Time ſhe is frozen up are not to be made good by a general Average, but are to be borne by the Ship alone. But, in our Opinion, the Mariners extraordinary Labour of cutting the Ice away from the Veſſel, Day after Day, either to eaſe, or get her out, as it is for the common Benefit, ought to be allowed in a general Average. If a Ship after ſailing from that City ſhould ſuffer ſo much Damage in a Storm, as that the ſeeking a proper Place to repair becomes abſolutely neceſſary, and the Maſter being convinced that *Petersburgh* is ſo, determines to return thither, where he is afterwards frozen up; in ſuch Caſe, the Expence of Victuals, and Wages, ſhould be admitted in a general Average. The *Copenhagen* Ordinance (N°. 13.) ſays, That the Repairs of the Damage a Ship receives under Water by running aſhore, are to be brought into a general Average. This we apprehend to be wrongly explained, inaſmuch as the Ship ought to bear her accidental particular Damages, as well under, as above, Water. The Inſtance (N°. 27 to 52) quoted by *Langenbeck*, ſeems to determine, that whatever ſhall be given to the Lord of a Manor, or a Proprietor of Land, for Leave to dig a Ship out, that has

* Which has been allowed to be general Average, as well in *London* as elſewhere.

been driven aſhore, ſhall be brought into a general Average: for though it may ſeem that theſe Charges belong to the Ship alone, as the Goods might have been unloaded without digging, it is nevertheleſs but reaſonable that the Cargo ſhould contribute, ſince whilſt *that*, and the Ship, were kept entire and together, guarded and defended, the Lord could not pretend to demand any Part of it; as he might had it been a Wreck: ſo that it was for the Benefit of both, to preſerve them together, and compound for the whole.

As to Detentions by a ſovereign Power, a Diſtinction is to be made; for if a Ship be embargo'd for the Service of the Potentate, in whoſe Port ſhe is (which all Princes have a Right to do) and a Propoſal be made for paying by way of Hire, or otherwiſe, for ſuch Detention; whether that Prince pay, or not, for the Time he detains her, ſhe ought to bear her own Charges of Mens Victualling and Wages. The Ordinance of *Sweden*, N°. 1062, and of *Denmark*, N°. 1271, go too far in this Point againſt the Inſurers, by directing, "That when a Ship is de-"tained by any Sovereign, or by an Embargo laid upon her, "the Inſurers ſhall make good the extraordinary Charges, and "Days of Demorage:" This we apprehend ſhould only be in caſe her Embargo was an Act of War, or the Conſequence of a Difference between the Prince whoſe Colours ſhe bore, and him that detained her; but not when the Detention is only to employ her in his Service for tranſporting Troops, *&c.* of which the Crown of *Spain* has afforded many Inſtances, and has generally paid tolerably well for ſuch Service, though ſometimes not ſo much as many Maſters thought they had a Right to demand.

In the laſt War between *England* and *Spain*, a Fleet of Merchant Ships from *Carthagena*, and *La Vera Cruz*, were detained by Order of the *Spaniſh* Court, above a Year at the *Havanna*, to wait the Arrival of a ſufficient Force to convoy them home: Notwithſtanding the Expence of maintaining a Ship's Crew there runs very high, yet the Owners of the Ships in *Spain* had no Recourſe againſt any of their Inſurers, nor againſt the Proprietors of the Cargoes; for they conſidered it as an accidental Occurrence, or mere Chance, that regarded the Profit, or the Loſs of the Undertaking, wherewith the Inſurers had nothing to do. *Verwer*, in examining the Queſtion, whether ſuch a Deten-

a Detention by a foreign Power ought to be brought into a general Average, or not; very properly replies, by propoſing another Query; Why ſhould Victualling and Mens Wages be deemed a general Average, rather than Intereſt of Money, and the Damage cauſed to Goods by ſuch a Delay?

On the Detention of foreign Ships in *England*, during the laſt War, when it was every where juſtly allowed, that Demorage ſhould be ſatisfied by way of general Average, the Maſters in their Demands ſtrenuouſly inſiſted on having ſomething allowed for Wear and Tear: but this was rightly rejected, and the bare Wages, and victualling the Men, only admitted; becauſe this Sort of Demorage is quite different from that which is daily ſtipulated to be paid, on chartering or freighting a Veſſel, when not only the Mens Victuals and Pay are conſidered, but alſo an Intereſt for the Owners Capital, or what the Ship ſtands them in, and the Detriment ſhe ſuffers by lying ſo much longer, than was at firſt agreed on.

The Ordinance of *Coningsberg* (N°. 824, 825) ſays, "That when Goods "contracted for are ſent on board in Lighters, the Communion between "thoſe Goods, the Lading already on board, and the Ship, commences "from the Moment of their being put into the Lighter; and (N°. 853.) "that in caſe any Loſs or Damage happen to the Goods in the Lighter, "if no Satisfaction can be obtained from the Owner of the Lighter, it "ſhall be made good as a groſs Average, by the Ship and Cargo, al-"though it ſhould not have all the legal Properties that are required for a "groſs Average." But this is inconſiſtent with Reaſon, and contrary to the Cuſtom of all other Places.

The Manner of finding out the true Total or Sum, whereon the Repartition of a general Average is to be made.

§ 58. The fixing of the right Sum, on which a general Average ought to be computed, can only be done by examining, what the whole Ship, Freight, and Cargo, if no Jettiſon had been made, would have produced neat, if they had all belonged to one Perſon, and been ſold for ready Money. And this is the Sum, whereon the Repartition ought to be made; all the particular Goods bearing their neat Proportion, neither more, or leſs. As for Inſtance:

A Ship bound from *Cadiz* to *Hamburgh*, the Cargo of which conſiſted of 400 Pipes of Oil, and 100 Butts of Wine, meeting with bad Weather in her Paſſage, threw overboard 100 Pipes of Oil, with all her Guns. Her Value being examined by Men

of Experience upon Oath was found to be, in the Condition ſhe arrived, and that ſhe might ſell for - *Mk.* 10000
The Guns thrown overboard eſteemed worth 1000

So that the Ship's Value, if ſhe had made no Jettiſon, would have been - - 11000
Suppoſe 400 Pipes of Oil, deducting 5 *per Cent.* for Leakage (there remain 380) ſold at the Market Price of 50 *Rlr.* ready Money, is - 57000
Deduct for Cuſtoms and other Charges 5 *M.* each Pipe - - 1900
55100
100 Butts of Wine, after deducting Leakage as above, there remain 95, which at *Rlr.* 60 is - *M.* 17100
Cuſtoms, *&c.* at 8 *M.* - 760
16340
The Sum total is - - *Mk.* 82440

So that if the Ship and Cargo had arrived without making any Jettiſon, and had been ſold for the Account of one Perſon, they would together have yielded neat *Mk.* 82440.

Now we will ſuppoſe the Ship for one Man's Account, the Oil for another, and the Wine for a third, then

A, Owner of the Ship, muſt contribute
for the Ship's Value on Arrival *Mk.* 10000
For the Guns thrown overboard 1000
For Freight of 400 Pipes of Oil at 50 *M. per* Laſt - *Mk.* 5000
For Freight of 100 Butts of Wine at 60 *M.* - - - - 1500
6500
Deduct for three Months Wages, to be paid the Sailors - 1500
5000
16000

B, The

B, The Mens Wages in ſtrict Juſtice ought to contribute for	-	-	*M.* 1500
C, Owner of the Oil for	-	*M.* 55100	
Deduct for the Freight, *&c.*	-	5000	
			50100
D, Owner of the Wine	-	*M.* 16340	
Deduct for the Freight	-	1500	
			14840
	is as above	-	*M.* 82440
But as both Law and Cuſtom have declared that Seamens Wages ſhall not contribute, we deduct the	-	-	1500
And ſo it is clear that the Jettiſon is to be borne by the Sum of	-	-	*M.* 80940

The Jettiſon, being 100 Pipes of Oil, is *M.* 13778
The Guns - 1000

14778, which according to the Cuſtom introduced will thus contribute;

1. The Ship for	*M.* 11000	*M.* 2007 : 15	
The neat Freight	5000	912 : 11	
			M. 2920 : 10
2. The Owner of the Oil	50100	-	9145 : 7
3. Ditto of the Wine	14840	- -	2708 : 15
	80940		14775

which Cuſtom is certainly wrong, and to the Prejudice of the Proprietors of the Goods; by making them alone bear the Burthen of the Sailors Non-contribution: For the Reaſon why both Law and Cuſtom excuſe Sailors from contributing, can have been no other, than to engage them the readier to conſent to a Jettiſon, and not expoſe themſelves too much, and thereby riſk the Whole; which a Share in the Loſs might lead them to do: And as this equally tends to the ſaving of the Ship and Cargo, each ought to bear a ſuitable Proportion of theſe 1500 *M.* as follows:

For

As 82440 *M.* is to 1500, ſo is { 11000 / 6500 } for the Ship's Share to *M.* 318 : 6
and 50100 for the Oil - 911 : 7
and 14840 for the Wine - 270 : 3
82440 1500

So that from *M.* 17500, the Value of the Ship, Guns, and Freight, deducting 318 : 6. as above the Ship ſhould contribute in Juſtice and Equity - - on 17181 : 10 for *M.* 3136 : 5

from *M.* 50100 { the Proceeds of the Oils deduct } 911 : 7 { the Oils ſhould contribute } on 49188 : 9 for 8979 : 2

from *M.* 14840 { the Proceed of the Wine deduct } 270 : 3 { the Wine ſhould contribute } on 14569 : 13 for 2659 : 9

M. 80940 *M.* 14775

On this Article relating to Seamens Wages we muſt further add, that only ſo much of thoſe Wages ought to be deducted from the Freight, as may be due from the Time of their beginning to load, till their Arrival: For if any remained due to them on Account of their outward-bound Voyage, it was a Debt owing to them by the Owners of the Ship, and muſt have been paid by thoſe Owners if the Ship had been loſt in coming home. Moreover if the Maſter hath advanced any Thing to his Crew, in Part of their Wages for the Voyage home, it ſhould be reckoned as if it had not been paid: for the Sea-Riſk of advancing Money to the Sailors ſhall be for the Maſter's Account, provided he benefits himſelf by it, either in the Reduction of one Coin to another, or by retaining ſomething out of it: but if he acquaint his Owners with the Tranſaction, and the Advantage be for them, the Riſk is for their Account.

What Particulars belong to petty, or accuſtomary Average, to be borne one Third by the Ship, and two

§ 59. To the petty, or accuſtomary Average (of which one Third is borne by the Ship, and two Thirds by the Cargo) belong Lodemanage, Towage, and Pilotage; to which the Ordinance of *France*, N°. 744, adds Light-money, Beaconage, Bridge, Toll, Quarantine, and River Charges, Signals, Inſtructions, Paſſage Money by Caſtles; Expences for digging a Ship

Ship out of the Ice, when frozen up; but the Inſurers have nothing to contribute hereto, as is very well explained in the Ordinance of *Stockholm*, N°. 1122. At *London* by Cuſtom; *Dover* Pier. At *Cadiz*, the Health-Viſits, and Examinations into the Contents of the Ship's Cargo, called there *el Fondeo*, or ſearching to the Bottom of the Ship's Hold. In Lieu of all which different petty Port Charges, it is uſual at ſome Places to pay 5 *per Cent.* calculated on the Freight, and 5 *per Cent.* more for Primage to the Captain. Thirds by the Cargo.

§ 60. By the Ordinance of *France*, N°. 738. the extraordinary Charges for the Ship alone, or for the Goods alone, and the Damages befalling each in particular, ſhall be a ſimple, and particular Average, which the Inſurers are to make good, in Proportion to the Sums they have underwrote, and received a Premium for. This we have conſidered in ſeveral Lights, and endeavoured to clear up, in the foregoing *Sections*, from 32, to 41. The ſimple, or particular Average to be made good by the Inſurers.

§ 61. Ever ſince the Year 1749, it has been the Cuſtom in *England*, as it was before in moſt other Countries, as mentioned in §. 14. [*a*] that no particular Average ſhall be paid by the Inſurers, under 3 *per Cent.* even general Averages are not paid at *Hamburgh*, if the Damage be leſs than that; but in *London* thoſe Averages that are general, are ſatisfied, be they ever ſo ſmall. We muſt here remark that almoſt all Ordinances ſeem deficient in not fully explaining when, and after what Manner, the Damage ſhall be deemed to exceed 3 *per Cent.* We ſhall, to elucidate this Matter, deſcend to particular Circumſtances: If in a Cheſt containing one hundred Pieces of Linen, three are deducted for Damage, and as ſuch allowed to the Buyer; the Loſs ought to be recoverable from the Inſurers, whether that Cheſt was in a Policy by itſelf, or amongſt a Parcel of an hundred Cheſts: For why ſhould not a Perſon, who has inſured and paid an equal Premium for an hundred Cheſts, have the ſame Advantage as he that is inſured but for one? Suppoſe a Merchant has ſhipped 101 Cheſts of Goods, N°. 1 to 101; of which, on Arrival, three Cheſts are by Sea or other Accident ſo ſpoiled, as to be worth nothing; if the Damage be calculated as on the whole Value of 101 Cheſts, it will not exceed 3 *per Cent.* and is by moſt Inſurers thought not to be recoverable by the Inſured, eſpecially if the Inſurance be made without expreſsly declaring in the Policy the No ſimple, or particular Averages under 3 *per Cent.* are paid by the Inſurers.

particular

particular Sum inſured on each Cheſt. We cannot help thinking, however, that if ſuch a Caſe came to be rightly explained to a Jury of Merchants, the Inſurers would be condemned to pay the Value of theſe three Cheſts, in the ſame Manner as they would, if it had been expreſſed how much was inſured on each Cheſt, or as if the 101 Cheſts had been inſured in five different, and diſtinct Policies.

As for Example. N°. 1 to 20, in one Policy.
21 to 40, in a Second.
41 to 60, in a Third.
61 to 80, in a Fourth.
and 81 to 101 in a Fifth.

The Inſurers in this Caſe, ſuppoſing a Loſs or Damage of one Cheſt, of the Goods ſpecified in each of the three firſt Policies, muſt unqueſtionably have paid the Average, which would have amounted to 5 *per Cent.* becauſe the Loſs of a Cheſt would have been one in twenty: And farther it might be conſidered as quite a different Thing to find whole Cheſts ſpoiled. The Law, or Cuſtom, by which the Inſurers are not obliged to pay any particular Average under 3 *per Cent.* was probably eſtabliſhed in order to free them from the Vexation of being called upon for every trifling Damage that might happen to a few Pieces in a Cheſt or Bale. We are of Opinion, that notwithſtanding an Inſurance is made under the general Name of Merchandiſes, at leaſt each different Parcel or Kind of Goods ought to be conſidered by itſelf, and the Inſurers made liable for what Damage exceeds 3 *per Cent.* in ſuch a Parcel. However as we have as yet no ſettled Rules in this Point, the beſt Way is to ſet Matters out of Diſpute, by Explications in the Policy; and no reaſonable Inſurer ought to object to any Diviſion, or fixing particular Values on Parcels of Bale Goods. If a Perſon ſhips 1000 Pieces of Longells divided into 50 Bales of 20 Pieces, each Piece worth 1 *l.* he may ſay 1000 *l.* on 50 Bales at 20 *l.* per Bale, and then the Inſurer will be liable for 3 *per Cent.* Damage on each Bale. But no Inſurer ought to admit any Diviſion in the Value of Goods of another Nature; ſuch as Sugar, Hemp, Oil, where the Exemption of 5 or 10 *per Cent.* Average is from other Conſiderations.

[a] *Amſterdam*, N°. 545. *Hamburgh*, 981. *Stockholm*, 1124. *Copenhagen*, 1274.

§ 62. The

§ 62. The Inſurers are liable for all Damages, and Charges, proceeding from any Capture, Detention, or Repriſal, except it can be proved that the Inſurer deſignedly concealed Circumſtances from them, which he knew might expoſe the Ship to ſuch Accidents, and therefore would not declare them, to avoid giving more than a common Premium: But whatever contraband Goods may have been clandeſtinely ſhipped by other People, unknown to the Inſured; and the Veſſel thereby expoſed to a Capture or Detention; cannot in any ſhape prejudice his Inſurance, unleſs the Inſured ſtipulated that the Underwriters ſhould be free of Captures. In the laſt War ſeldom any other Declaration was made, but that the Inſured's Intereſt conſiſted in neutral Property, and not in any contraband Goods; yet the Variety of Circumſtances which occurred will not eaſily be forgot, as hardly any one of the general Ships paſſed free, without great Charges. See *Caſe* 27, B. C. *Caſe* 36, S.

In what Caſes the Inſurers are liable for Damages reſulting from Captures, Detentions, or Repriſals.

§ 63. In *London* and *Antwerp*, as *Stracca* mentions in a Treatiſe he wrote upon Inſurance; and as it is expreſſed in an *Ancona* Policy of the Year 1567; the Inſurers were, even ſo early as then obliged to anſwer for the Barretry of the Maſter. And a Policy of *Florence* of 1523, N°. 11. alſo comprehends the Riſk "*di Barratteria di Padrone, e di Contrebanda di* Veneziani, *ſalvo di Stiva e Dogana*, to be for the Inſurer. The new *Stockholm* Ordinance of 1750, N°. 1067. declares, "That "the Inſurers ſhall alſo be anſwerable for all the Damages that "may happen to the Ship and Goods, through Negligence or "Knavery of the Maſter and his Crew, of whatever Kind they "be, and that they may ſeek their Redreſs againſt the Maſter." But this Ordinance makes a Diſtinction; for in caſe any Goods ſhould be miſſing or loſt, for which a Bill of Lading has been ſigned; the Inſured ſhall firſt have Recourſe againſt the Maſter's Perſon and Eſtate, and, for what falls ſhort in theſe, againſt the Ship, and Freight: But if all is not ſufficient, he then has a Right to ſue the Inſurers for the Deficiency. In the Ordinance of *Rotterdam*, *Art* 43. a remarkable Diſtinction is made between a Maſter choſen by the Owners, and one who accidentally becomes ſo: It ſays (N°. 251.) That it ſhall not be lawful for the Owners of a Ship to inſure againſt the Barretry of the Maſter appointed by themſelves, but they may againſt the Diſobedience and Roguery of his Crew. It is our Opinion that the Inſurers

The Inſurers muſt pay for the Faults and Thefts of the Maſter and Crew.

are not anſwerable for ſmall Pilferings, bad Stowage, or extraordinary Leakage, proceeding from bad Caſks: And alſo that when Inſurances are made on Ships, and Effects, that are within the Dominions, where the Perſons, for whoſe Account they are, reſide; they muſt firſt procure Juſtice to be done them at home, before they have a Right of Claim againſt their Inſurers abroad, or at leaſt they ought to bring Proofs of having uſed their Endeavours to effect it.

What Damages the Inſurers are to pay on Ship, and Goods, in Caſe of ſtranding.

§ 64. When a Ship is ſtranded, the Inſurers upon the Cargo are bound to make good all that is damaged, ſtolen, or loſt; and to pay all Charges occaſioned by ſaving the Goods, even though thoſe Charges ſhould amount to more, than what the Salvage produces: And the Inſurers upon the Ship are obliged to pay the whole, or whatever is loſt, or damaged, belonging to her; and if ſhe is got off again, all the Coſt, or Expence of ſaving, repairing, and putting her in the ſame good Condition ſhe was in before her Misfortune.

What ought to be ſaved firſt in Caſe of Stranding or Shipwreck.

§ 65. It is natural and juſt for People ſuffering Shipwreck, to endeavour firſt to preſerve their own Lives; which when once done, their next Care ſhould be, how beſt to keep what has not periſhed, from being pilfered or ſtolen; and that what is moſt valuable may firſt be ſaved. To prevent Seamen from making the Saving of their own Cheſts and Goods their greateſt Care, and to encourage them to preſerve all they can when a Veſſel is wrecked; it is by ſome Sea Laws enacted, that not only their Wages due when the Misfortune happened, ſhall be paid, but moreover ſomething for their extraordinary Labour [*a*]. If without Leave from the Maſter, who offers to maintain them, they immediately abandon the Place where the Ship ſtranded, whilſt there are Hopes of Salvage, no Wages ſhould be paid them from the Produce of what is ſaved without their Help. When Accidents of this Nature happen on a ſudden, People are apt in their Surprize to lay hold of the Things neareſt to them, without remembering, or conſidering that they have others of much greater Value under their Care; therefore it has been often agreed with Maſters of Veſſels, on the ſhipping of Diamonds, and ſo expreſſed in the Bill of Loading, that he ſhould always carry them about him, and ſave them if he himſelf landed ſafe. By the Ordinances of *Spain* it is enacted, that Gold and Silver ſhall be lodged at a certain Place near the Main-maſt, ſo that it may

may always be eaſily come at, and that in Caſe of Shipwreck thoſe Specie ſhall firſt be ſaved: Sometimes it luckily happens that a Perſon has Cheſts or Bags of thoſe precious Metals neareſt at hand, and on that Account they are the only ones ſaved. Perſons who are concerned, and on the Spot, may, previous to their knowing who ſhall be moſt fortunate, agree among themſelves to bring all that is ſaved into an Average. We remember that in the Year 1727, the Ship called *Nueſtra Senora de las Anguſtias*, having on board 144 Cheſts, containing 432000 Dollars in Silver for Account of Sundries, and 443 Surrons of Cochineal (of which 120 were entirely for the Maſter's Account) met with ſuch bad Weather in her Paſſage from *La Vera Cruz*, that ſhe became very leaky, inſomuch that it was with great Difficulty her Crew could keep her above Water, tho' they inceſſantly laboured at the Pumps, Day and Night. After great Danger, and Fatigue, they arrived at the *Iſland-Flores*, where there is no Ground to anchor, or whereon to run aſhore: The Maſter and Men determined to ſave themſelves, with what Money and Goods they could, before ſhe ſunk; and accordingly with only the Ship's Launch and Boat, and three or four ſmall fiſhing Boats, they firſt carried all the People aſhore, and then took out the Silver. Juſt as they had unloaded it all, the Ship ſunk where the Depth is not to be fathomed, and with her all the Cochineal and Goods belonging to the Maſter, and to others. When he arrived at *Cadiz*, with the Silver ſaved, the Maſter demanded of the Proprietors of the Silver, for his having preferred the Salvage of their Property to his own, to ſhare with them on an Average. Tho' his Allegations ſeemed founded on Reaſon yet he loſt his Suit at *Madrid*, where the King's Council very juſtly argued; that as by his Majeſty's Ordinance the Silver was firſt to be ſaved, the Maſter was thereto obliged, preferably to the ſaving of his own Property; and conſequently had only done his Duty, and could not claim any thing for ſo doing.

[*a*] The *Wiſby* Law, ſays (*Art.* XV.) that the Mariners are obliged to exert the utmoſt of their Power to ſave, and preſerve the Merchandize; and for ſo doing, ought to be paid their Wages; but not, if they neglect to do it. The Laws of *Oleron*, ſaid to have been introduced in *England* by *Henry* I. *Art.* 3. ſay, that if a Veſſel happen to be caſt away in any Place whatſoever, the Mariners ſhall be obliged to uſe their beſt Endeavours for ſaving as much of the Ship, and Cargo, as they can, and the Maſter ſhall allow

them a reaſonable Conſideration to carry them home to their own Country; but if they have not endeavoured at ſuch Salvage, the Maſter ſhall not be bound to provide for them in any Manner, but ought to keep them in ſafe Cuſtody, until he know the Pleaſure of his Owners.
The Ordinance of *Antwerp*, of *Phil.* II. N°. 31. ſays, that the Ship's Crew are in Duty bound to aſſiſt the Maſter, to the beſt and utmoſt of their Power, in ſaving the Cargo; and when they have ſo done, they ſhall be paid their Wages at that Place (but otherwiſe not) and a reaſonable Salvage alſo be given them.

How the Damage is to be borne, when two Ships run foul of one another.

§ 66. Moſt modern Marine Laws ordain, that when two Ships no ways wilfully, but accidentally, run foul of each other, they ſhall equally bear the Loſs, or Damage which enſues; but if the Moiety of the Damage done to one of them ſhould exceed the Value of what the other can make good, no Claim ſhall extend farther than the Produce of the whole: So that the Owners, by giving up what was theirs, are freed from any farther Demands [*a*]. The Cuſtom of equally dividing the Damage happening by ſuch Accidents on each Ship, was not heretofore general; for in ſome Parts an Eſtimation of both Ships and Cargoes was made, and each bore of the Damage in Proportion to their Value. In the 68th Article of the Laws of *Wiſby*, it is thus expreſſed: "If it happen that by Ships running foul of "each other, one of them with her Cargo be loſt; the Goods "of both Ships ſhall be appraiſed, and what is loſt be rated at "ſo much in the Pound, on the Value of what each had in; "and the ſame Poundage ſhall be calculated on the Worth of "the Ships." *Molloy*, *De Jure maritimo*, *Lib.* ii. *Cap.* 6. § 10. ſays, if two Ships happen to encounter, and croſs each other, and the Crew ſwear their Innocency, Contribution muſt be made by a juſt Equality; but if one periſh, as there can be no proportioning the Loſs, ſo no Contribution. The *French* Ordinance of *Lewis* XIV, N°. 746. ſays, "In caſe Ships run againſt one an-"other, the Damage ſhall be equally borne by both Parties, whe-"ther during the Voyage, in a Road, or Harbour;" but by N°. 747. "If the Damage be occaſioned by the Fault or Neglect of "either of the Maſters, it ſhall be repaired by him who was the "Cauſe of it." Tho' the Ordinance directs that the Damage ſhall be equally ſuſtained by thoſe that have ſuffered, and thoſe that did it; yet it does not enact, that each Ship ſhall bear the half of ſuch Damage. To be more particular, and to give our Sentiments in this Point: Suppoſe the Ship that ſinks by running foul

foul of the other, to be worth - - *Rlr.* 10000
And the other to be valued at - - - 2000
Rlr. 12000

We think the Loſs will be equally ſuſtained if the Owners of the Ship and Cargo ſaved, valued at *Rlr.* 2000, pay to thoſe of the Ship and Cargo loſt, worth *Rlr.* 10000, the Sum of *Rlr.* $1666\frac{2}{3}$, for as *Rlr.* 12000, the whole Valuation, is to *Rlr.* 10000 loſt, ſo is *Rlr.* 2000 to *Rlr.* $1666\frac{2}{3}$ as above. Or if the Ship ſunk was in Value *Rlr.* 2000, and the Ship preſerved 10000, then the Owners of the Ship, and Cargo, worth *Rlr.* 10000, ſhould pay to thoſe of the Ship and Cargo of *Rlr.* 2000 ſunk, *Rlr.* $1666\frac{2}{3}$.

Or if the Repairs of one of the Ships damaged ſhould coſt - - - - - - *Rlr.* 500
And the other - - - - - - 1000
1500

We think it is a juſt Equality to make the Ship and Cargo worth *Rlr.* 10000 bear to the Amount of - 1250
And the Ship and Cargo, worth *Rlr.* 2000 - 250
1500

In which general Doctrine, as alſo in the Manner how to reckon the Value, we differ from the Opinion of the much eſteemed, and often quoted *Verwer* of *Amſterdam*, who ſays (*Page* 121.) that the Ship is to be rated according to her Worth at the Time of receiving the Damage, excluſive of Proviſions and Freight; and the Cargo to be rated at its firſt Coſt, with all Charges till on board: Nor does he make any Diſtinction whether the Accident happened when the Veſſel had performed half of her Voyage, or more. We eſteem it juſter, not only that a Diſtinction ſhould be made in the Circumſtances wherein the Misfortune happened; whether between Ships outward, or homeward-bound; in a Port, or at Sea; but likewiſe that Regard ſhould be had to the Place where the Sufferers come to make a Demand againſt each other for Damages. To illuſtrate this Aſſertion; let us ſuppoſe a Ship from *Leghorn*, ſailing up the *Elbe* for *Hamburgh*,

Hamburgh, runs foul of a Veſſel coming down, bound to *Cadiz*; the Damage done to her obliges her to return to *Hamburgh*, in order to be repaired; and for theſe Repairs a Demand on the *Leghorn* Ship is made at *Hamburgh*. In this Caſe the Contribution ſhould undoubtedly be calculated on what the *Leghorn* Ship and Cargo would yield neat there, and not on the Coſt in *Italy*; but the *Cadiz* Ship cannot contribute for more than the Coſt of the Goods at *Hamburgh*, with all Charges on board. Let us farther examine how this Damage ought to be divided between the Concerned in each Ship, in particular. We will ſuppoſe that the Ship bound for *Cadiz* had ſunk: Her Value with what the Cargo coſt at *Hamburgh* only, amounted to *Rlr.* 2000, and the *Leghorn* Ship with the neat Import of her Cargo *Rlr.* 10000. We therefore maintain that the 1666 $\frac{2}{3}$ Rix-dollars which the *Leghorn* Ship muſt pay for Contribution, ought to be diſtributed among the Concerned in the 10000 *Rl.* in the following Manner, *viz.*

1. The Ship for her Value in the Condition ſhe arrived, or for what ſhe would have ſold for at *Hamburgh*, which we will ſuppoſe to be - - *Rl.* 2500
2. For her neat Freight - 500 — 3000
3. The Sailors for their Wages; as they ought not to be freed where they have done nothing to deſerve an Exemption; we will ſuppoſe to be - 500
4. The Value, which the Cargo would render neat at *Hamburgh* - - - 6500

That is 16 $\frac{2}{3}$ *per Cent.* or 1666 $\frac{2}{3}$, on *Rl.* 10000

And the Concerned in the Ship ſunk ought to divide the ſaid *Rl.* 1666 $\frac{2}{3}$ among them in the ſubſequent Proportions, *viz.*

1. The Ship ſhould receive in Proportion to her Value when ſailed, including the Proviſions, and Money advanced to the Sailors, which we will ſuppoſe to be - *Rl.* 1000
2. The Cargo, conſiſting only in Coals, which amounted with all Charges on board, to - 1000

Rl. 2000

It

It is upon theſe two Articles alone the aforeſaid *Rl.* 1666 $\frac{2}{3}$ ſhould be divided (making 83 $\frac{1}{3}$ *per Cent.*) becauſe no Freight, or Seamens Wages were due, as the Ship was juſt going down the River, on her outward-bound Voyage.

[*a*] By the Ordinance of *Antwerp* of 1563, N°. 33; of *Rotterdam*, N°. 465; of *Hamburgh*, N°. 926; and of *Stockholm*, N°. 1079; the Damage or Loſs, cauſed by one Ship's running againſt another, is to be borne equally between them; that is, half by each; and if there be not a Sufficiency ſaved of either of them to pay the Moiety, the Concerned muſt be content with what there may be ſaved.

The Premium expreſſed in a Policy of Inſurance, ſhews whether the Riſk was more than common or not.

§ 67. The Premium which an Inſurer receives is what binds him to anſwer for all ſuch Damages and Loſſes as are expreſſed in the Policy: And if what the Inſured paid was more than a common Premium, it implies that there were ſome Reaſons for giving more; and an Inſurer by accepting it, tacitly admits it to be a ſufficient Conſideration for any Circumſtance whatſoever: So that this extraordinary Premium being proved, Allegations of Concealments, or uncertain Rumours of Retardments, can be of no great Weight againſt the Inſured.

Premiums to be paid in ready Money, or within ſuch a limited Time, as the Inſurers ſhall agree.

§ 68. The Payment, or Non-payment, of a Premium before a Loſs happens, makes no Alteration in an Inſurance, according to the preſent Cuſtom, as the Inſurers may inſiſt upon being ſatisfied at the Time of their underwriting, if they do not incline to give Credit for it. The *Copenhagen* Inſurance-Company expreſsly directs (ſee N°. 1241 to 1243) that the Policy be not delivered before the Premium be paid; and that it appear by a Receipt of their Book-keeper that the Premium was actually ſatisfied the Day after the Policy was ſigned: But at Places of great Trade ſuch Regulations are too limited. In the new Ordinance of *Amſterdam* of 1744, N°. 566, the Commiſſioners of their Inſurance Court are enjoined to proceed to an Execution, whenever an Inſurer has made a Demand of his Premium twice, in two different Days. In a Proclamation made the Year after (N°. 578.) it is expreſſed; "That both "the Broker who did the Inſurance, and the Perſon for whoſe "Account it was done, ſhall be anſwerable for the Premium "provided the Inſurer make his Demand in fourteen Days, "after having ſigned the Policy:" Notwithſtanding this Order ſome Brokers agree with the Inſurers to pay for all the Premiums at a fixed Time. At *Hamburgh* the Inſurers regard only the

the Brokers to whom they underwrite, as their Debtors for the Premiums: In their Ordinance (N°. 1009) they have a Law which ſays, " If an Inſurer truſts a Broker for his Premium, it " is from him only he can demand it; yet if the Broker " become inſolvent, and the Inſured have not paid him the " Premium, he ſhall be obliged to pay it to the Inſurer." At *London*, when Inſurers ſign to Brokers, and Office-Keepers, and leave the Policies in their Hands, it is they only that are to be looked on as Debtors for the Premium.

What Right an Inſurer has to the Premium when the Inſured becomes Inſolvent.

§ 69. But when an Inſurer has an open Account directly with the Inſured for the Premiums, we think he has, in caſe of the Inſured's Failure, a prior Right againſt the Goods he inſured on, when arrived, if remaining on board. And we are confirmed in this Opinion by its having been ſo decided in a Caſe at *Hamburgh*, where a Bill of Lading of Goods, for Account of a Perſon in *France*, was pawned by the Factor to whom they were conſigned, together with a Policy of Inſurance that he had made on them: The Queſtion was, which ſhould firſt be ſatisfied, the Premium, the Loan, or the Proprietor? As it happened that the Proprietor had not inſured the Goods in *France*, the Inſurance done at *Hamburgh*, in caſe of a Loſs, muſt have been recovered, either for his Benefit, or that of the Lender; it therefore was but reaſonable that the Inſurer ſhould be paid his Premium prior to both: Which, by the bye, may ſerve as a Proof that Bills of Lading, and Policies of Inſurance, are not ſufficient Securities to lend Money on; becauſe if the aforementioned Goods had been inſured elſewhere by the Shipper, or right Owner of them, the Inſurance made by him who pledged them would not have been paid, in caſe of a Loſs.

What Right an Inſured has againſt an inſolvent Inſurer's Eſtate.

§ 70. In caſe an Inſurer fails, the *Amſterdam* Ordinance, N°. 536, ſays, " That the Inſured may make a new Inſurance for " the Sum inſured, and order it to be notified to the Aſſignees " of the inſolvent Perſon by a Meſſenger from the Court of " Inſurance:" But it does not explain how the Inſured is to be conſidered in regard to his Premium paid. The *Hamburgh* Ordinance, N°. 965, ſays, " That a new Inſurance may be made, " and the Premium be recalled from the inſolvent Debtor." According to the *Stockholm* Ordinance, N°. 1098, " The In- " ſured may make a freſh Inſurance, but cannot recall the Pre- " mium from his former Inſurer, unleſs he can prove him to " have

" have been in an inſolvent State when he ſigned the Policy." The *Swedes* followed the Diſpoſition of the *Amſterdam* old Ordinance, made in the Year 1626: But it ſeems as if the Compilers of the new Ordinance of that City, of 1744, found this Diſpoſition not equitable, and therefore left it out: Which leads us to conſider what may be the moſt practicable, juſt, and reaſonable Method, in this Particular. For although it is well enough expreſſed in the *Hamburgh* Ordinance that the Premium may be recalled from the inſolvent Inſurer, ſtriking out his Name againſt it, yet it will not follow that this is always to be done, as the Aſſignees of a Bankrupt Inſurer ſeldom have ſufficient in their Hands to ſatisfy a Demand of Premiums for all the Riſks depending; which might often amount to the greateſt Part of what they might receive. Nevertheleſs if the Aſſignees cannot, or ought not to refund the full Premiums, it ſeems indubitable to us, that the Inſured cannot be denied to be admitted an equal Creditor with others, for his Premiums on Riſks ſtill depending, and accordingly ſhare *pro rata* of whatever the Bankrupt's Eſtate produces: moreover we are clear in Opinion that for thoſe Loſſes, which were known at the Place where the Inſured lived previous to the Inſurer's Failure being public, he ought to be admitted as a Creditor in the Inſurer's Eſtate, whether the Loſs be total, or partial, and his Affairs ſooner or later adjuſted, and regulated.

§ 71. In 1620 (as is noted by *Malynes*) the Premiums at *London*, were

		In the Year 1753, in Summer	Winter
3 *per Cent.*	*Middleburg*, *Rotterdam*, *Rouen*, *Edinburgh*, *Hamburgh* - - -	1 *per Cent.*	1 ½ a 2
4 -	*Bourdeaux*, *Rochelle*, *Lubeck*, *Copenhagen*	1 ¼	2 a 2 ¼
5 -	*Liſbon*, *Biſcay*, *Ireland* - -	1 ¼	1 ¼ a 1 ½
5 -	*Dantzick*, *Riga* - - -	1 ½	2 ½ a 3
6 a 7	*Cadiz*, *Gibraltar*, *Malaga* -	1 ¼	1 ¼ a 1 ½
8 a 9	*Livorno*, *Civita Vecchia* - -	1 ¼	1 ½ a 2
10 -	*Venice* - - - -	1 ½	1 ¾ a 2
9 -	*Archangel* - - -	2 ½	3
15 -	*Eaſt-Indies*, out and home -	8	8

The Difference of Premiums, in former Times and at preſent.

Which ſhews that the inſuring Buſineſs muſt have been very lucrative in thoſe Times: What Profit it leaves at preſent, we ſhall not pretend to determine; however a Perſon who knows how to diſtinguiſh properly between good, and bad Adventures, and is a Judge of Shipping, *&c.* may ſtill get Money by it. The Danger from the *Turks* and *Moors* muſt certainly have been very great, in 1620, to raiſe the Premiums on Voyages to *Portugal*, *Spain*, and the *Levant*, ſo high as thoſe abovementioned; but at preſent our Navigation being unmoleſted by them, the Riſk is conſequently leſs. We will add, that our Trade has gone on improving ever ſince; and it is moreover preſumed that our Inſurers, by the Increaſe of Buſineſs, have learnt to find their Account in carrying it on, though at leſs Premiums.

The Difference at preſent, between Winter and Summer Premiums.

§ 72. When a Ship is detained longer at her loading Place, than the Time limited in the Policy, or comes from thence later in the Year, the *Stockholm* Ordinance (N°. 1053) ſays, "The "Inſured ſhall be obliged to acquaint his Inſurers with it; and "becauſe their Riſk is greater, he ſhall give them an additional "Premium, to make it equal to what is currently paid at the "Time of her ſailing." At *London*, and almoſt all other Places, it is underſtood that the Inſurers run all Riſks, either in Winter or Summer, if no certain Time for departing be expreſſed in the Policy. It is however cuſtomary for Inſurers in *London*, who act with Circumſpection, to guard againſt extraordinary Events in Voyages by proper Explanations in the Policy. Examples of this may be ſeen in the Inſurances on Ships from *Peterſburg*, where different, or conditional Premiums are inſerted, according to their ſailing late, or early; ſo that $\frac{1}{4}$, $\frac{1}{2}$, or 1 *per Cent.* is agreed to be returned, if a Summer Ship, that is, if ſhe departs in *Auguſt* or *September*. And on Adventures expected from the *Leeward Iſlands*, a Difference is often made of 3, or 4 *per Cent.* in the Premium, if warranted to ſail before the End of *Auguſt*; or a Stipulation to return a correſpondent Part of the large Premium given, when the Ship departs ſooner.

The Date when a Policy is ſigned, ſerves to compare with Proofs offered

§ 73. By the Date inſerted on underwriting a Policy, compared with the Date of Facts, or Events which happened afterwards, and muſt be proved, it will appear whether there is any Reaſon to ſuſpect that the Inſured knew, or has concealed any Circumſtance which he ought to have diſcovered to the Inſurers.

ſurers. On this Head the Ordinance of *Copenhagen* N°. 1271, ſays, " That whoever has Inſurances made is obliged to declare " plainly and ſincerely, all the good, or bad News, he has di- " rectly or indirectly learnt concerning the Ship, either by Let- " ters, or verbal Report, *&c.* And if the Ship which he gets " inſured is built of Fir, inſtead of Oak, and he has not declared " it to his Inſurers, they ſhall, in caſe of Loſs under theſe Cir- " cumſtances, pay only half the Sum they underwrote."

to aſcertain the Time when Facts happened; and to diſcover whether there is reaſon to ſuſpect any fraudulent Concealment.

Mr. *Poſtlethwayte* in his Dictionary (Page 148) quotes a Caſe tried before Lord Chief Juſtice *Lee*, in 1743, where *John Thurmond* on refuſing to pay 100 *l.* he had re-inſured to *Giles Rooke*, was ſued for it by the latter: It was alledged for *Thurmond*, that one Mr. *Crockat* had received a Letter by a Ship called the *Collet*, adviſing him that the *Polly*, the Ship inſured by *Rooke*, and re-inſured by *Thurmond*, had ſailed from *Carolina* ten Days or a Fortnight before the Ship *Collet*, and that the Ship *Collet* arrived in *England* about ſeven Days before the Inſurance was made, and that the Plaintiff *Rooke* had not informed the Defendant thereof; which was inſiſted on as a Fraud, ſufficient to diſcharge *Thurmond* of this Inſurance, it being, as was alledged, a ſettled and eſtabliſhed Rule, that on making an Inſurance all material Circumſtances relating to the Adventure ought to be diſcloſed to the Inſurer, to enable him to judge of them: And the Chief Juſtice allowed this Rule, and declared it as his Opinion, " That the Concealment inſiſted on, was a ſufficient Cir- " cumſtance to diſcharge the Defendant from the Policy: For, " he ſaid, that theſe Contracts are made upon mutual Faith " and Credit, and that to conceal ſuch Circumſtances, which " may make any Difference in the Adventure, is fraudulent, " for the Inſurer ought to have the Advantage of Judgment " upon them; and that where ſuch Concealment is, the Inſu- " rance ought not to bind:" But the Defendant not being able to make out this Fact, to the Satisfaction of the Jury, the Plaintiff *Rooke* had a Verdict in his Favour. Without pretending to penetrate into all the Motives the Jury had for differing from the Opinion of the Judge, we may remark, that as it was a Re-Inſurance the Defendant *Thurmond* muſt needs have concluded that there were more than ordinary Motives for doing it; and if it appeared upon the Trial that he had received a larger Premium than was given to the re-inſured *Rooke*, this

Difference might be conſidered as a ſufficient Premium (as mentioned before, *Sect.* 67.) for the Retardment of three Weeks of one Ship more than another in a Voyage from *Carolina* to *London*; which is not at all uncommon.

Inconſiſtency of the Laws in ſome Places to vacate Inſurances, on a Poſſibility of conveying bad News at the Rate of a League or a League and a half *per* Hour, from the Time and Place of the Misfortune.

§ 74. According to the *Recopilacion de las Leyes de Indias* in *Spain* (N°. 77) if a Loſs happen at a Place from whence the Inſured could have been informed of it by Land, at the Computation of a League in an Hour; the Inſurance in ſuch a Caſe ſhall be void, and the Inſurers obliged to return the Premium, retaining only one half *per Cent.* It is not at all ſurpriſing that the Merchants in *Holland*, in 1570, oppoſed the Deſigns of the Duke *de Alva*, who ſtrenuouſly inſiſted upon having ſuch a Law introduced there; for wherever ſuch a one is in Force, no Body can depend on being ſecure, who makes any Inſurance upon Ships expected from abroad ready to ſail, if they met with a Misfortune after a quick Paſſage. A Veſſel from *Hamburgh*, for Example, may, with a fair Wind, get in eight Days to the Bay of *Biſcay:* Suppoſe her bound to *Cadiz*; and that ſhe ſailed eight Days after the Poſt that carries Advice of Goods being ſent by her. Inſurance on thoſe Goods was to be made at *Cadiz*; it might happen, that that Ship was in ſeven Days after Departure loſt at *Bilboa:* this would be fifteen Days after the Departure of the Poſt from *Hamburgh* for *Cadiz*. From *Bilboa* to *Cadiz* is but 168 Leagues, and theſe, at a League *per* Hour, require ſeven Days, which added to the fifteen already mentioned make twenty-two: Now the Letters from *Hamburgh*, by the regular Poſt in Summer, do not get to *Cadiz* in leſs than twenty-eight Days: all Perſons therefore by this Law are expoſed to a Nullity of Inſurance, even though they inſured on the ſame Day they received Advice of their Goods being ſhipped. The Statutes of *Genoa* ordain (N°. 153.) two Miles for an Hour, but explain and direct it to be underſtood that there muſt be a Proof of ſome Advice of the Loſs being known, or at leaſt ſome Appearance that it was ſo. The Ordinance of *France* (N°. 701) fixes a League and a half to be reckoned to the Hour, when there is any Preſumption that the Inſured knew of the Loſs; however in N°. 702, it ſays, that by inſerting in the Policy the Words *upon all good or bad News*, the Inſurance is to remain valid: ſo that we may reaſonably ſuppoſe, every Body in that Kingdom takes Care that thoſe Words be put in the Policy, when they inſure upon Effects hourly

hourly expected from abroad. By the *Rotterdam* Ordinance it is directed in the ſame Manner (N°. 243, 244) to reckon three Miles for two Hours. The *Amſterdam* Ordinance, (N°. 523) ſays, that when three Miles are reckoned for two Hours, it ſhall be preſumed that the Inſured knew of his Misfortune when he made the Inſurance; though by ſwearing he did not, his Inſurance ſtands good. At *London* all Inſurances hold, provided both the Inſured and Inſurer were ignorant of the Arrival, or Loſs of the Ship they were concerned in: And there are many Inſtances of Ships being arrived in the River, and even Advice of their Arrival received by other People in Town, at the Time the Policy was underwrote, without the Inſurers being obliged to return the Premium: on the other Hand the Inſurers muſt pay a Loſs, if they cannot prove the Inſured knew of it, and that he by an Oath maintains he knew nothing of it.

What Proofs or Documents are required to recover a Loſs.

§ 75. It is not eaſy to deſcribe the Number and Nature of the Proofs, or Documents required to recover a Loſs. Some we will enumerate. It is common for the Inſurers to aſk,

1. What is inſured elſewhere upon the Ship or Goods, for which the Loſs or Damage is demanded?

2. The Inſurers aſk for the Proteſt; which is a Declaration upon Oath, uſually made by the Maſter, and ſome of his People, before a Juſtice, Notary, or Conſul, at any Place where they firſt arrive; ſetting forth whatever bad Weather they met with in the Voyage, or any other Accident that befel them: As alſo what Precautions they took, to guard againſt the ill Conſequences to be apprehended from thoſe Accidents, with the Motives they had for going into any other Harbour than that they were bound to: Which Sort of Proteſts are now become almoſt a mere Matter of Form, as a Notion is propagated at ſome Places, that if the Maſters neglect proteſting, immediately after Arrival, againſt the Damages that have reſulted from any bad Weather, they make themſelves anſwerable for thoſe Damages that ſhall be found in any of the Goods aboard; from which they believe a Proteſt frees them. But this cannot be ſufficient to clear them on all Occaſions. It is true the *French* Ordinance of 1681, *Tit.* x. *des Congés & Raports*, *Art.* 4. enjoins, "That all Maſters ſhall be obliged to make a Report within "twenty-four Hours after their Arrival, before the Lieutenant "or Judge of the Admiralty, of all that has happened in their "Voyage." But we imagine that the Intent of this Order is only

only to prevent the making any partial Declarations, by not allowing Time, and Room for it; which might have ſome Weight where the Maſter was no ways concerned, but not when the Queſtion is, whether the Damage did not proceed from his own Careleſneſs, bad Stowage, or Defect in caulking his Decks; for on any Appearance of ſuch Neglects, the Proprietors of the Goods have a Right, notwithſtanding the Proteſt, to inſiſt that the Ship be viſited, and a particular Examination of the Crew taken, how, and where theſe Goods were laid. At *Hamburgh* it is the Cuſtom ſoon after a Ship's Arrival, tho' not juſt within 24 Hours, to ſend a printed Notification to every Perſon, who has Goods on board, importing that the Maſter fears his Cargo may have ſuffered Damage: The Intent of this is, that all who have Goods to receive, may ſend to inſpect the Ship, and the Places where they were ſtowed, before they take them aſhore. This is certainly a very prudent Precaution, and greatly tending to the Maſter's Juſtification [*a*]. At *London*, Maſters ſeldom do any thing more, than to have their Intentions of making a Proteſt noted before a Notary Publick, without giving any Information to the Perſons who are to receive the Goods, *&c.*

3. For the Bills of Sale, and often for the Cuſtom-houſe Regiſters, to find out the Owners, when Inſurances are made on the Body of a Ship.

4. For Bills of Lading ſigned by the Maſter; which are uſually called for, to prove an Intereſt in Goods: But if there is any apparent Reaſon to diſtruſt their being genuine; all ſuch Clearances, or Regiſters from the Cuſtom-houſes, as are ordinarily given where the Ship has been diſpatched, are called for: and upon Proofs of ſuch Authority a greater Dependance in general may be made, than upon mere Bills of Lading; more eſpecially upon Certificates from thoſe Regiſters which the *Spaniſh* Ships in their *Weſt-India* Trade carry along with them, and of which Duplicates remain behind in the Cuſtom-houſe: For the Manner of making ſuch a Regiſter is, that every Perſon who has Goods to ſhip, previous to their Embarkation gives an Account of their Bales and Marks, and pays a Duty for them, either by Weight, or Meaſure, which is explained in a Cocket; and when they paſs the Gates, or go to be ſhipped, they are ſearched to ſee whether they correſpond with the Entry delivered in; and if they do, each Parcel is marked with a Cuſtom-houſe Stamp, and the Cocket

Cocket ſigned by the Searchers: When on board, another Set of Viſitors re-examine them, and put their *Cumplido* upon each Cocket, out of all which the general Regiſter is framed, to go by the Ship, in order to a Re-examination by the King's Officers at the Places of their unloading in *America*.

[*a*] In the Ordinance of *Hamburgh* of 1603, it is ſaid, (in the Chapter *Of Maſters and Mariners*, *Art.* 34.) that every Maſter is diligently to inſpect the Stowage of the Goods, and to take Care that they be not expoſed to Damage; for if any enſue, or they be diminiſhed, through the Maſter's or Mens Fault; the former ſhall be obliged to make the Merchant Satisfaction for the ſame: And Senator *Langenbeck* in his Annotations upon this Law, (*Page* 78.) remarks that although the City of *Bordeaux*, as well as ſeveral others both in *France* and *Italy*, where Wines are ſhipped, keep a Set of ſworn Labourers, or Stowers, to ſtow Goods well aboard of Ships, the Maſter is not thereby freed from ſuperviſing, or being anſwerable for the Stowage, as ſome of them have pretended; becauſe the Stowers muſt put them in ſuch Places as the Maſter, or his Officers direct; and the Inſufficiency of ſuch a Plea was proved in a Law Suit carried on there, before the Admiralty in *Hamburgh* in 1725, by *Teſſier*, againſt Captain *Detlof*.

In what Time Loſſes or Damages are recovereable from Inſurers.

§ 76. In moſt Policies the Time is expreſſed when Inſurers ſhall pay in Caſe of a Loſs. At *Hamburgh* (where elſe no Abandon of Effects is admitted) the Ordinance ſays, N°. 939. " That when a Ship, bound to a Place in *Europe*, ſhall not be " heard of in three Months, beyond the uſual Time for ſuch " a Voyage, ſhe may be conſidered as loſt, and the Inſured is " permitted, to abandon Ship and Cargo to the Inſurers, and to " demand Payment of the Sums they have reſpectively under- " wrote. The Inſurers ſhall be obliged to pay 92 *per Cent.* " within two Months from and after the Time ſuch Abandon " was notified to them, on Behalf of the Inſured, by the Bro- " ker, or their Diſpatcher." And in N°. 940. it is further ordained, " That in caſe the Inſurers ſhould make any Demur to " pay within the before-limited Time, the Inſured may ſtay un- " till a Year and two Months are elapſed from the Time of the " Ship's Departure, and then the Inſurers ſhall be obliged to pay " 100 *per Cent.* without any Deduction: and if the Inſured de- " ſires in the mean while to have Security given, they ſhall be " obliged to give it. But whenever there is certain Advice, that " a Ship is loſt or taken, and her Salvage and Recovery, deſpe- " rate; the ſame Ordinance directs (N°. 961.) that the Inſurers

" ſhall

" ſhall be obliged to pay at the Rate of 98 *per Cent.* within two " Months from, and after the Time, that ſuch Loſs has (by the " Broker) been notified to them; provided that ſuch Loſs has " before been proved, by the proper and neceſſary Documents." N°. 950. of the ſaid Ordinance is remarkable for enjoining, " That notwithſtanding a Policy contain a Clauſe, that the In- " ſured ſhall not be obliged, in Caſe of a Loſs, to produce any " thing more than the Policy, yet he ſhall be conſtrained not on- " ly to prove the Loſs of the Veſſel, but alſo that he actually had " an Intereſt in her, either by Bills of Lading, or ſome other " Documents." At *London* it is a Cuſtom with the Inſurance Companies, in eight Days from the Adjuſtment of the Loſs to pay 98 *per Cent.* deducting half *per Cent.* for prompt Payment: The private Inſurers pay the ſame Sum of 98 *per Cent.* in a Month from the Time of ſettling the Loſs; and both the one, and the others, in Caſes of Salvage and Reclaims, are always very ready to pay ſomething on Account, or to advance Money for carrying on Suits, either upon the Reaſonableneſs of the Thing, or a Tender of proper Security.

N. B. By the Ordinance of *Amſterdam*, N°. 573. a Loſs is to be paid within three Months after its being notified. By that of *Copenhagen*, N° 1259. within two Months after Proof. By that of *Stockholm*, N°. 1207. within one Month after Proof. By the *Recopilacion des Leyes de Indias* in *Spain*, N°. 105. within ſix Months after its being duely proved; and within a Year and half, after the Ship's ſailing if no Advice is received. But the Inſureds were formerly obliged by their Policies, to give Security, that they ſhould pay $133\frac{1}{3}$, for every 100 they received too much; but, in the Policies at *Cadiz* now (N°. 131.) this Condition of the $33\frac{1}{3}$ *per Cent.* is left out.

Return of Premiums.

§ 77. It is an univerſal Cuſtom, and has been ſo Time immemorial, as the Ordinance of *Antwerp* (N°. 64.) explains it; that in caſe too much is inſured, or Inſurances are made at divers Places without Fraud, the firſt ſhall ſtand good, and the laſt Inſurers ſhall return the Premium, keeping only one half *per Cent.* for their Trouble of keeping a Book, or Account of it. It often happens that Goods are inſured to come in certain Ships expected from abroad, but do not come by them; and as in this Caſe no Riſk is run, the Inſurers are obliged to return the Premium, as above. Sometimes Ships that have begun to load, change their Voyage, and unload again what they had aboard: Under

under which Circumſtances the Inſurers are intitled to ſomething more than half *per Cent.* for the Time the Riſk continued; though whilſt the Ship was in Port, it could be but very ſmall. The Ordinance of *Amſterdam* (N°. 534.) allows in ſuch Caſes to keep one *per Cent.* And the *Stockholm* Ordinance (N°. 1072) directs that it ſhall be ſo much, as impartial Arbitrators, or their judicial Court of Inſurances, ſhall adjudge.

The Cuſtom in what Manner Returns of Premiums are to be made; and to what Policies applicable, differs at different Places.

§ 78. We have already, in § 9 and 10, hinted ſomething how Cuſtoms varied in regard to what Inſurances are firſt to ſtand good: And in § 16. we think we have evidently ſhewn, that when a Space has intervened between ſhipping and ſhipping, inſuring and inſuring, the Inſurers, who ſtood alone for a while expoſed to a Riſk upon the Goods firſt ſhipped, ſhould not afterwards be put on a Level with thoſe who underwrote later, and for whoſe Risk Goods were later ſent aboard, or not ſent at all. At *London*, it is commonly inſiſted, (as mentioned above, § 9. 16.) that all who have inſured on Goods expected for one and the ſame Perſon's Account, without particularizing them; whether they be comprehended in one, or more Policies, and underwrote ſooner or later; ſhall contribute equally to any Loſs, or the Return of Premium if over-inſured; which would be juſt and right, if all the ſeveral Policies had been ſigned before any Goods went on board; but not otherwiſe. For a Proof of this Aſſertion, let us ſuppoſe that a Perſon who expected Goods from *Cadiz* in the Ship *Banſtead*, to the Value of 5000 *l.* inſured 2000 *l.* proviſionally at the *London Inſurance* Office, under the general Terms of Goods, before he knew of any Goods being ſhipped: On his receiving Advice, ſome Time after, that the Value of 2000 *l.* was gone on board, he got 3000 *l.* more inſured by the *Royal Inſurance* Company: now we maintain that two thouſand Pounds Value of the Goods firſt ſhipped, ought to be applied to the *London Inſurance* Company, and not mixed with the Goods loaded laſt; for it is poſſible that the *Banſtead* might have periſhed in the Bay of *Cadiz*, with only the firſt ſhipped Goods on board, and before the Reſolution was taken in *London* to increaſe the Inſurance; conſequently the *Royal-Exchange* Company would not have been comprehended in the ſaid Loſs: And although the Laws of *France*, *Holland*, *Hamburgh*, and *Stockholm*, are in this Reſpect leſs ſubject to Contrariety, by ordaining that only the Perſons who underwrote one and the ſame Policy,

ſhall ſtand upon an equal Footing, and that the firſt-ſigned Policy ſhall firſt ſtand good; yet this alſo admits of ſome Diſtinctions, as will appear by the following Inſtance.

A at *Hamburgh*, intending to ſhip the Value of 20000 Rix-dollars for his own Account in the *Cadiz* Galley, gives *B* a Broker, Orders to get 10000 *Rlrs.* inſured; and to another Broker *C* he gives the ſame Sum.

B opens his Policy, and gets ſigned, the		*C*, opens his Policy, and gets ſigned,		
1ſt of *Jan.*	4000	2d *Jan.*	5000	7000
6th ditto	3000	3d ditto	2000	
7th ditto	3000	4th ditto	3000	

We apprehend that notwithſtanding here were two Policies, and that that of *A* was firſt opened, yet the Inſurers on both ought to be reſponſible according to the Dates when each ſigned: For ſuppoſe that by the 3d of *January* the Value of 12000 *Rlrs.* had been ſent on board, and the Ship in the Night between the 3d and 4th was burnt; the 6000 *Rlrs.* upon *B*'s Policy had not been ſigned, and conſequently only the 4000 *Rlrs.* could be engaged in the Loſs; but upon *C*'s it would fall on 7000 *Rlrs.* From whence it follows, that in caſe *A* had only ſhipped till the 3d of *January* to the Value of 12000 *Rlrs.* the aforeſaid Inſurance of 20000 *Rlrs.* remained executed: And if on the 8th of *January* he changed his Mind, and reſolved to ſhip no more, the returned Premium on the 8000 *Rlrs.* ought in Juſtice to be made upon,

Rlrs. 2000, of the 3000 from *C*'s Policy, ſigned the 4th *Jan.*
3000 - from *B*'s ſigned 6th ditto
3000 - from ditto ſigned 7th ditto

So that the Law of *Spain* (N°. 85.) ſhould in Strictneſs be followed, which ordains, "That the Inſurers who ſigned laſt in "Date ſhould return the Premium, in caſe of an Over-Inſurance." By all which we think the Neceſſity of being as explicit as poſſible in all Inſurances, is rendered ſufficiently plain.

When Orders are given to inſure abroad, the Inſurance ſhould commence from the Date of ſuch Or-

§ 79. When an Inſurance is intended to be done abroad, and at home; an Explanation in the Policies on both Sides, which ſhall have the Preference, or ſtand good firſt, is a very material Circumſtance, becauſe this cannot be decided by the Dates alone. For Inſtance: A Perſon reſiding at *Hamburgh* had the Value of *Rlrs.* 10000, or 2400 *l.* Sterling, to ſhip for *Liſbon*, and

and had actually loaded, on the 1ſt *July*, to the Value of 4000 *Rlrs*; whereupon he gave an Order that Day to his Correſpondent in *London*, to get Inſurance done for 1000*l.* Sterling, without any Limitation either in Premium or Circumſtances; and on the 4th of *July*, he got inſured at *Hamburgh* the remaining 1400*l.* or 17500 *Mks.* though he had not then ſhipped more than the firſt-mentioned 4000 *Rlrs.* or 12000 *Mks.* and the 5th of *July* ſome Circumſtances occurred, that induced him to alter his Deſign, and to reſolve on ſhipping no more: Now the Query is, Who ought to make a Return of Premium according to the Senſe of the *Hamburgh* Ordinance? To which we reply: That notwithſtanding the Underwriting of the *London* Inſurers muſt be of a later Date than that of thoſe in *Hamburgh*, who underwrote the 5th of *July*, becauſe the Order ſent to *London* on the 1ſt of *July* could not poſſibly arrive there before the 7th, and therefore the Underwriting in *London*, could not be before that or the next Day; yet we are very clear, that the Inſurance in *London*, though later in Date, ought to ſtand good before that made at *Hamburgh*: For if between the 1ſt of *July*, that the Order for Inſurance was ſent to *London*, and the 4th of the ſame Month, when it was made at *Hamburgh*, the Ship had been burnt, this laſt-mentioned Inſurance could not have taken Place; and conſequently that done in *London*, on the Order given the 1ſt of *July*, muſt have born the entire Loſs of theſe firſt ſhipped Goods. Therefore we think it is evident, that the Return of Premium ought to be made by the *Hamburgh* Inſurers; notwithſtanding it is ſaid in the Ordinance of that City, (N°. 919) "That when any Perſon "has cauſed Inſurances to be made at more than one Place, it "ſhall not be in his Choice, or Power, to determine which "Inſurance to return, or annul: And no Conſideration ſhall "be had, which Inſurer paid more or leſs Premium; but the "Policy which is firſt in Date, ſhall firſt ſtand good:" On a Trial, due Diſtinction would be made at *Hamburgh*; and the Validity of the *London* Inſurance would not depend on, or be determined by, the Date of ſigning; but by the Time when this unlimited Order was given for making it.

ders, and not from that when the Inſurers underwrote; that it may the eaſier be determined whether the foreign, or home Inſurers are to ſtand firſt, or laſt.

§ 80. Re-Inſurances may be as juſtifiable, and made with as little Scruple, as Inſurances, provided the true Motives for doing them are not concealed. By an Act of Parliament paſſed

Of Re-Inſurances.

in *England* the 25th of *March* 1747 (N°. 1297) it is enacted, " That it ſhall not be lawful to make Re-Inſurance, unleſs the " Inſurer ſhall be inſolvent, become a Bankrupt, or die: In " either of which Caſes, ſuch Inſurer, his Executors, Admi- " niſtrators, or Aſſignees, may re-inſure to the Amount of the " Sum before inſured, provided it ſhall be expreſſed in the Po- " licy to be a Re-Inſurance." The Leave given by this Act for the Executors of an Inſurer, who dies ſolvent and in good Circumſtances, to re-inſure, is very neceſſary, and will often be done for his Heirs to ſecure the Eſtate he has left: But to make Re-Inſurances for inſolvent Inſurers, or for thoſe who become Bankrupts, will ſeldom happen. The Inſureds will naturally take Care for themſelves by immediately making freſh Inſurances, and not neglect to put the Loſs of the Principal out of the Queſtion, when they can do it by only paying a new Premium. It would be highly imprudent to poſtpone and rely upon any Re-Inſurances to be made for their failed Inſurer, ſince it cannot be expected to be done ſo ſoon: And even ſuppoſing that a Re-Inſurance were made for the Bankrupt-Inſurer's Eſtate, if a Loſs happened, as the Premium of this Re-Inſurance muſt come out of the common Stock, it would ſeem that the Recovery of ſuch Loſs ought to be for the Benefit of the Body of Creditors: And thus the inſured Creditor could receive but a Dividend equal with others. Therefore common Senſe dictates to the Inſured, that he ought to do the beſt for himſelf, whilſt he has it in his Power, that is, make a freſh Inſurance; whereby he will remain a Creditor againſt the Bankrupt's Eſtate only for what Premium he paid, or any Coſts that attended it: And it is upon this Principle we maintain, § 70, that whenever the Inſureds can make in Time freſh Inſurance for any unexpired Policies that had been ſigned by a Bankrupt Inſurer, they ought not to be admitted as Creditors in the Bankrupt's Eſtate for more than the Premium: Which ſeems not to have been well diſtinguiſhed by an Act of Parliament made 19 *Geo.* II. which ſays, " Whereas " Commiſſions of Bankruptcy have frequently iſſued againſt " the Obligor or Inſurer, *&c.* before the Loſs of the Ship or " Goods has happened; it hath been a Queſtion whether the " Obligee or the Inſured ſhould be let in to prove their Debts, " or be admitted to have any Benefit under ſuch Commiſſion; " it is enacted that they ſhall be admitted to claim, and after

" the

" the Loſs or Contingency to prove the Debt thereon, in the " like Manner as if the ſame had happened before the iſſuing " of the Commiſſion; and receive a proportionable Dividend " equal with others." Which in our Opinion ſhould only be for ſuch Contingency, and for ſo much as the Inſured could not find any Remedy to help himſelf by freſh Inſurances; ſuch as Damages which were not known to him, or their Amount not yet made out or decided. The Act paſſed for not permitting Re-Inſurances, except in the above-recited Caſes, was intended to hinder ſome gaming Re-Inſurances then in Vogue; but we think the bad Cauſes only ſhould have been excepted: For as it now ſtands, it deprives the *London* Inſurers, without any juſt Reaſon, of the Liberty to re-inſure themſelves, when they have a Mind to diſcontinue their Riſks; and it may oftentimes be neceſſary, even for a Perſon in good Circumſtances, to drop his Inſurance Buſineſs, and to re-inſure all his depending Riſks. We remember that formerly ſome People in *London* uſed to make a Branch of Trade of having their Friends abroad underwrite for them, and then re-inſuring themſelves at home at a lower Premium: We own we cannot perceive that any more Harm could follow from this, than from executing it by Commiſſion: On the contrary, if the Premium was increaſed, whether it was received by the Inſurer, or Re-Inſurer, was not material, as they both reſided in *England*. However this Sort of Trade has it ſeems dropt of itſelf, as on certain Occaſions Gentlemen were condemned to pay as Inſurers abroad, without ever having been able to recover from their Re-Inſurers in *London*. But this, with ſome other Subjects, we muſt leave for a future Conſideration, and here end this Eſſay.

A

COLLECTION

OF

REMARKABLE CASES

OF

INSURANCES, AVERAGES,

AND

BOTTOMRIES.

With OBSERVATIONS made on the ſame, particularly diſtinguiſhed by *Roman* Letters in the Margin.

CASE I.

Which ſhews what Sum ought to be inſured, ſo that in caſe of Loſs, the Principal, the Premium, and Intereſt may be recovered.

CASE I. IN the Year 1725, and before that Time, it was cuſtomary at *Cadiz* to ſell Goods to be paid for at the Return of the Flota to *Old Spain*; charging an Intereſt of 8 *per Cent. per Annum*, on the Amount of the Goods thus ſold. But when *N. M.* (who at that Time came to be eſtabliſhed there) was aware that this Method of Sales muſt be attended with no ſmall Hazard; inaſmuch as the Buyers ſeldom made much if any Inſurance upon ſuch Riſques; he therefore inſiſted upon the Sellers having the Liberty of making the Inſurance that ſhould be needful;

needful; to which the Buyers consented; provided they were to be charg'd for such Insurance at a Premium certain, as should be agreed on between them. So that in case the Ship and Goods were lost, the Buyers were absolutely free from any Demands to be made on them; and the Sellers were to remain satisfied with the Insurance they themselves had made or procured to be made; and which if they neglected to do, they were to be look'd upon as their own Insurers. CASE I.

On this footing, the House wherein *N. M.* was lately become a Partner, sold to the Owner of a *Spanish* Ship, which was one of the Flota, and ready to sail, Goods to the Value of - - - *Dollars* 40,000

To this Amount of the Goods was added a Premium of 11 *per Cent.* being what was agreed with him at the Time of making up the Account, for insuring the Risk out and home. And the House remained at Liberty to make the Insurance in foreign Parts on the best Terms they could. Which 11 *per Cent.* made 4,400

44,400

Interest at 8 *per Cent.* for 18 Months, in which Time the Flota is commonly expected to return - - 5,328

Dollars 49,728

For which Sum the Buyer signed an Obligation, and proceeded on the Voyage himself in his Ship with the Flota. After his Departure, when *N. M.* came to inspect the Books, and to consider the above Account, he observ'd that by the Hurry in which Business is commonly transacted at such Times, a very material Omission had been made in setling with the *Spaniard*: and that the Person to whose Care the same had been left, had committed an Error in charging the Premium on no more than 40,000 Dollars, because in case of a Loss, the House must necessarily loose, not only the whole Premium, but the Interest likewise on the Premium and Principal together: Which to have recovered in full he ought to have charg'd further as follows, *viz.*

On 9728	Dollars	at	11 *per Cent.*	Premium	1070	8
1070	8	-	12 *per Cent.*	Interest	128	45
1198	53	-	11	- - -	131	84
131	84	- -	12	- - -	15	82
147	66	-	11	- - - -	16	24

On

CASE I.

On 16 24	- - 12	- - -	1	95
18 19	- 11	- - - -	2	
2	- - 12	- - -		24
		Dollars	1366	62

And altho' the House at *Cadiz* (who were only the Factors) did procure Insurance to be made abroad at 9 and 10 *per Cent.* yet that Difference in the Premium was not sufficient to make Amends for the Mistake above-mentioned: For besides falling short the above 1366 $\frac{62}{100}$ Dollars, they must likewise lose the Commission they paid for making the Insurance and the usual Deduction of 2 *per Cent.* in being paid only 98. It happened that this Ship on her Return home was actually lost, and as they were obliged to accept from some of the Insurers a Composition of 92 $\frac{88}{100}$ *per Cent.* it would have further considerably augmented their Loss, had not an Alteration in the Coin happen'd in that Interval, which helped them out to make good the Debt. But from thenceforward they thought it more adviseable not to take any Insurances of this Nature on themselves as Factors: but to apply to each of their Principals his proportional Share, and leave it to them to take Care of their own Insurances.

Now to make the Account quite exact according to the Agreement made with the *Spaniard* at *Cadiz*, the House ought to have charg'd him as follows, *viz.*

N°. A. The Premium on *Dollars* 51094 $\frac{7808}{8768}$ at 11 *per Cent.* is

Dollars 5620 $\frac{8768}{3840}$

The Interest on 45620 $\frac{3840}{8768}$ at 12 *per Cent.* is

5474 $\frac{3968}{}$

Dollars 11094 7808
+ 40000

makes *Dollars* 51094 $\frac{7808}{8768}$

For if from - - - *Dollars* 100 Insured
You pay premium - - *Dollars* 11
And Interest on the premium 12 *per Cent.*
For 18 Months - - - - - - 1 $\frac{32}{100}$

12 $\frac{32}{100}$

So that you have no more than - *Dollars* 87 $\frac{68}{100}$ covered by

by this Inſurance for 100 of your Intereſt. And then as 112 is 100 Principal, ſo 87 $\frac{68}{100}$ is but 78 $\frac{32}{112}$ and therefore for 78 $\frac{32}{112}$ you muſt inſure 100, which gives you for CASE I.

Dollars 40000 — 51094 $\frac{7808}{8768}$ as above.

And as a Caution to prevent People from falling into Errors, we will add the following Examples; and firſt we will ſhew, That when a Premium of 100 *per Cent.* was given for Money on Bottomry from *Cadiz* to *La Vera Cruz*, and the Premium of Inſurance at *London* for the Riſk out and home was 40 *per Cent.* it did not yield 8 *per Cent. per Annum* Intereſt, ſuppoſing the Voyage to be performed in eighteen Months. N°. B.

In *October* 1742, it was adviſed from *Cadiz*, that 100 *per Cent.* Premium was given for Money on Bottomry to *La Vera Cruz*, when Money was to be had there on Intereſt at 8 *per Cent. per Annum*, and at the ſame Time the Inſurance for the Riſk out and home might be procured at *London* for 40 *per Cent.* We will examine how the Account would turn out for a Perſon living at *Cadiz* to borrow Money at 8 *per Cent.* Intereſt, and to lend it on Bottomry, and inſuring at *London* on the Terms aforeſaid, ſuppoſing the Returns to arrive in eighteen Months.

And in order to make this out, we may calculate that for each 100 Dollars lent at *Cadiz*, there comes 200 Dollars back from *La Vera Cruz* (allowing thereby the Difference between the Dollar of *Cadiz* at 8 Rials Plate, and the *La Vera Cruz* Dollar, which is worth 10 $\frac{5}{8}$ Rials Plate, as an Equivalent for the Commiſſion at *La Vera Cruz*, and the Freight and Indulto to be paid at *Cadiz*) and then the Account would ſtand thus: N°. C.

CASE I. Suppoſe Inſurance to have been made at *London* on the Value of - - - *Dollars* 10,000

For the Deduction of 2 *per Cent.* as the Inſurers in caſe of a Loſs pay no more than 98 *per Cent.* *Dolars* 200

For $\frac{1}{2}$ *per Cent.* deducted on *Dol.* 9800 for prompt Payment - 49

For Commiſſion at 2 *per Cent.* - 196

For the Premium paid on *Dol.* 10,000 at 40 *per Cent.* - 4000

For Commiſſion making the Inſurance $\frac{1}{2}$ *per Cent.* - - 50

For one Year's Intereſt at *Cadiz* on *Dol.* 4050, at 8 *per Cent.* - 324

For $\frac{1}{2}$ a Year ditto, at 4 *per Cent.* on *Dol.* 4374 - - - 174 $\frac{96}{100}$

17A. 4993 $\frac{96}{100}$

Thus 10,000 Dollars inſured at *London*, will, at the End of 18 Months, leave neat at *Cadiz* no more than - - - *Dol.* 5006 $\frac{4}{100}$

And as 100 Dollars lent, are at the end of 12 Months - - - 108

And at the End of 6 Months more 4 $\frac{32}{100}$

112 $\frac{32}{100}$

Then 112 $\frac{32}{100}$ are to 100—as 5006 $\frac{4}{100}$ are to 4456 $\frac{10608}{11232}$.

So that 4456 $\frac{10608}{11232}$ lent, will with the Addition of 100 *per Cent.* return no more than *Dol.* 8913 $\frac{9984}{11232}$.

And as the aforeſaid Sum of - *Dol.* 4456 $\frac{10608}{11232}$

With the Premium of Inſurance paid for *Dol.* 10,000, at 40 $\frac{1}{2}$ *per Cent.* - 4050

And Intereſt at 112 $\frac{32}{100}$ - - 1048 $\frac{624}{11232}$

Make together *Dol.* 9555

It would fall ſhort - - *Dol.* 641 $\frac{1248}{11232}$.

And therefore it plainly appears that inſtead of Gain, there would be a Loſs of 6 $\frac{11}{16}$ *per Cent.*

Or if we were to ſuppoſe it for Account of a Perſon living at *London*, where he could have Money at 5 *per Cent.* Intereſt; yet

yet the Commiſſion he muſt pay at *Cadiz* for the Diſpoſition of it on Bottomry, would make the Loſs pretty much the ſame. CASE I.

But ſuppoſing the Premium to have been agreed at 20 *per Cent.* for the outward, and 20 *per Cent.* for the homeward Risk. Query, What Difference would it make? N°. D.

To anſwer which it muſt be obſerved, that if the Ship ſhould be loſt outward-bound, the Premium for the homeward-bound Voyage muſt be returned, deducting $\frac{1}{2}$ *per Cent.* as uſual. Therefore it is needleſs to inſure ſo much on the outward as on the homeward Voyage.

For Example,

If for *Dol.* 100 inſured, there is paid in caſe of a Loſs - *Dol.* 98
Deducting the Premium which is 20 *per Cent.*

78 for *Dol.* 100.

On the outward-bound Voyage the Inſurance needs not be made for more than 128 $\frac{16}{28}$, which at 20 *per Cent.* is - - $25\frac{2500}{3900}$.
And on the homeward-bound Voyage, as 78 is to 100, ſo is 125 $\frac{250}{390}$ to 161 $\frac{238}{3042}$, at 20 *per Cent.* is - - - - $32\frac{3280}{15210}$.

Making in the Whole *Dol.* $157\frac{13030}{15210}$.

Whereas if *Dol.* 100 inſured, gives as above - *Dol.* 98
Deducting the Premium 40 *per Cent.*

It follows that for 58--*Dol.* 100 muſt be inſured:
And for 100, 172 $\frac{24}{58}$, which at 40 *per Cent.* is - - $68\frac{56}{58}$

$168\frac{56}{58}$

Difference *Dol.* $11\frac{960220}{882150}$

Conſequently there will be a Saving of about $6\frac{5}{8}$ *per Cent.* in making the Inſurance ſeperately at 20 *per Cent.* and 20 *per Cent.* home, rather than at 40 *per Cent.* jointly.

CASE I. N°. E. We will next conſider what the compound Premium ought to be for Inſurance made out and home; ſuppoſing the current Premium outwards to be 25 *per Cent.* and the homeward at 20 *per Cent.* to pay 98 *per Cent.* in caſe of Loſs with the uſual Deduction of $\frac{1}{2}$ *per Cent.* from the 98

The Anſwer will be $39\frac{8506}{97511}$.

For if from £. 100 inſured
2 *per Cent.* is deducted

98

And $\frac{1}{2}$ *per Cent.* on 98 $\frac{98}{200}$

$97\frac{102}{200}$

Deduct the Premium
paid for Inſurance 25 —— *per Cent.* outward

Then for - £. $72\frac{102}{200}$ muſt be inſured £. 100
And for £. 100 muſt be inſured £. $137\frac{13226}{14502}$,
which at 25 *per Cent.* Premium for the outward Voyage is - - - $34\frac{6932}{14502}$

£. $134\frac{6932}{14502}$

Proof.

For from £. $137\frac{13226}{14502}$
Deduct 2 *per Cent.* $2\frac{10996}{14502}$

$135\frac{2230}{14502}$

And $\frac{1}{2}$ *per Cent.*
thereon $\frac{9800}{14502}$

There remains £. $134\frac{6932}{14502}$ neat to be paid in caſe of a Loſs.

Again, if from £. $97\frac{102}{200}$, as above,
is deducted the Premium paid for Inſurance - 20 *per Cent.* homeward

Then for £. $77\frac{102}{200}$, muſt be inſured £. 100.
And for £. 100 muſt be inſured £. $173\frac{279673271}{502025011}$,
which at 20 *per Cent.* Premium for the homeward Voyage is - - - $34\frac{393149661}{502025011}$

£. $169\frac{997743}{502025011}$

Proof.

Proof. CASE I.

From £. 173 $\frac{27967327}{50202501}$

Deduct 2 *per Cent.* 3 $\frac{26412497}{50202501}$

170 $\frac{1554830}{50502501}$

And $\frac{1}{2}$ *per Cent.* thereon - - $\frac{47709900}{50502501}$

There remains £. 169 $\frac{997431}{50502501}$ as above.

Then

If for £. 173 $\frac{27967327}{50202501}$ the Premium is £. 69 $\frac{997431}{50202501}$, it is for £. 100---£. 39 $\frac{8506}{97511}$.

CASE II.

Proving what yearly Interest was made, when Money on Bottomry at London *for* China *was lent at* 40 per Cent. *and the Premium of Insurance out and home was at* 20 per Cent. *supposing the Lender to be in Disburse two Years.* CASE II.

IN the Month of *June* 1746, the Premiums for Money on Bottomry on foreign Ships, and for Insurance thereon were at the Rates abovementioned.

Therefore computing that £. 100 lent was to bring back £. 140, and that in case of Loss only 98 less $\frac{1}{2}$ *per Cent.* was to be recovered for every £. 100 insured; the Insurance therefore ought to be made for £. 142 $\frac{8}{98}$, to recover - £. 140

Deduct the Premium, which at 20 *per Cent.* is - 28 $\frac{4}{7}$

It leaves £. 111 $\frac{3}{7}$

Deduct 100

on £. 100 Principal } The compound Profit in two
on 28 $\frac{4}{7}$ Premium } Years is - - 11 $\frac{3}{7}$

And as 128 $\frac{4}{7}$ --- 11 $\frac{3}{7}$, so £. 100 is 8 $\frac{8}{9}$ in two Years.

Then 108 $\frac{8}{9}$ multiply'd by 100 makes 10888 $\frac{8}{9}$, of which the square root is 104 $\frac{1}{3}$ for one Year.

Proof.

CASE II.

Proof. -	£. 128 : 11 $\frac{3}{7}$	
at 4 $\frac{1}{3}$ *per Cent.* is	5 : 11 $\frac{3}{7}$	
	£. 134 : 2 $\frac{7}{6}$	
at 4 $\frac{1}{3}$ *per Cent.* is	5 : 16 $\frac{4}{70}$	
	£. 139 : 18 $\frac{64}{70}$	== £. 140.
Differs only -	1 $\frac{6}{70}$.	

A multitude of Examples and Queſtions of this Nature might be added, which well deſerve the Attention of Merchants and Inſurers: And however trifling they may ſeem in themſelves, we cannot forbear declaring, that we have met with very few Adventurers, who, during the laſt War, have not been one Way or other more or leſs miſled in regard to Bottomry Premiums for want of a right Calculation.

CASE III.

CASE III. *Shewing how it was allowed to a Perſon over-inſured at* London, *to recover on a Loſs, not only ſo much of his Premium as was ſufficient totally to reimburſe himſelf for the Premium he paid; but likewiſe what Deductions were made in order to pay him* 98 per Cent. *for each* 100 *l. underwrote.*

IN the Year 1745, *H. L.* made an Inſurance in *London* for 1900 *l.* Sterling, for Account of a Correſpondent abroad, on Goods in a Ship from *Martinique* to *Nantes* at 36 $\frac{3}{4}$ *per Cent.* to pay 98 *per Cent.* in caſe of a Loſs: And the Livre of *Martinique* was valued in the Policy at 11 Pence Sterling, without any Declaration therein, whether the Premium was included or not in the ſaid Valuation. But notwithſtanding ſuch an Omiſſion, it was natural and eaſy to comprehend (as is proved in our Eſſay, § 41.) that to admit a Valuation of 11 Pence for a Livre from the *French* Iſlands, which in reality is not worth above 8 Pence, the Premium ought to be underſtood to be included therein;

therein; yet as the Merchants and Brokers (though poſſibly it proceeded meerly from Want of Reflection, § 41, p. 45.) had once eſtabliſhed amongſt themſelves that it ſhould be ſo: And Inſtances of Adjuſtments of Loſſes with private Inſurers being produced where the Addition of Premium had actually been allowed over and above the Valuation of 11 Pence *per* Livre; the Queſtion then only was, how upon this wrong Principle to form an exact Account of the Quantum? CASE III.

Now as it appeared that *H. L.* had on board, at the Valuation of 11 Pence, (excluſive of the Premium) to the Amount of - - - *L.* 1085.

Some of thoſe concerned in the Adjuſtment of this Loſs (being perhaps ſenſible of the Over-Valuation) were of Opinion, that only the Premium ſhould be added thereto of 36 ¾ to pay 98, which is - - 406 : 17 N°. A.

And ſo would have him recover at 98 *per Cent.* on - -	*L.* 1491 : 17	*L.* 1461 : 16
And the Premium at the Rate of 36 ¾ *per Cent.* returned on	408 : 3	148
	L. 1900	*L.* 1609 : 16

But others equally concerned in the Adjuſtment of this Loſs, proved very clearly, that if they had once admitted the erroneous Valuation of 11 Pence *per* Livre from the *French* Iſlands, excluſive of the Premium, to be right, the Account adjuſted in the Manner above muſt infallibly be wrong. N°. B.

For as *H. L.* on the foregoing Sum of *L.* 1491 : 17 at the Rate of 98 *per Cent.* would receive no more than - - - -	*L.* 1461 : 16
And deducting therefrom the Premium he paid at 36 ¾ *per Cent.* being - -	548 : 3
He would remain with only the Sum of -	*L.* 913 : 13
And by that Means fall ſhort of the Value that was on board - - -	171 : 7
	L. 1085

But

CASE III. N°. C. But it is very clear, that in order to recover *L.* 1085 in full, *H. L.* muſt have inſured at 36 ¾ *per Cent.* *L.* 100 for every - - - *L.* 61 : 5

that is, for *L.* 1085---*L.* 1771 : 8, and ſo might recover at 98 *per Cent.* *L.* 1736

And have a Return of Premium on 128 : 12, which at 36 ¼ *per Cent.* is 45 : 12

L. 1900 *L.* 1781 : 12

For, deducting from the above *L.* 1736 which he is to receive, *L.* 651 (being the Premium on *L.* 1771 : 8, at 36 ¾ *per Cent.*) it leaves him neat *L.* 1085, and is an inconteſtable Proof that it ought ſo to be.

In ſhort, after Abundance of Arguments *pro* and *contra*, this laſt Account was admitted to be quite exact; and to the beſt of our Knowledge was the firſt that was ever ſettled in *London* in that Manner; which has been followed ever ſince, and is now become the general Cuſtom.

CASE IV.

CASE IV. *Shewing in what Manner the Account of a Return of Premium is to be made out, on an Inſurance made from* Vera Cruz *to* Cadiz *on Silver, when the Quantity expected has not been ſhipped.*

IN the Year 1738 *I. E.* in *London* had inſured *L.* 2000 Sterling for his own Account, either Gold or Silver, expected by the *Aſſogue* Ships in the Year 1740, from *Vera Cruz* to *Cadiz*. On their Arrival it was found, that no more than 4000 *Mexican* Dollars were ſent for his Account. The Queſtion then was, for how much of the *L.* 2000 the Premium ſhould be returned?

The Aſſured calculated as follows:

There

CASE IV.

There were regiſtered - - *Dollars* 4000

Out of which is paid,

N°. A.

For Freight -	1 ½		
Maeſtra de Plata -	½	14 ½ *Dol. per Cent.*	
Ordinary Indulto	5	*Dol.* 580	
Marina -	4		
Conſulage, and for the Church -	1		
Donativo -	2 ½		
Per Almirantage 1 *per* Mill.		4	
Deſpacho - -		2	
Carriage from *St. Andero* to *Reynoſſa* a 9 Rp^ta.		4 : 4	
Carriage from *Reynoſſa* to *Cadiz* of 3309 ½ *Dol.* a 1 ¼		1 ¾ 57 : 7	
Commiſſion at *Reyn* ¼			
Ditto at *Cadiz* of 3251 ⅝ *Dol.* a 2 *per Cent.* -		64	
			712 : 3
			Dollars 3287 : 5
Which at 10 ⅝ Rp^ta. make -		*Rp^ta.* 34931	
and at 40 Pence *per* Dollar		*L.* 727 : 14 : 7 Sterl.	
And accordingly the Aſſured pretended to have the Premium returned of		1272 : 5 : 5	
		L. 2000 - Sterl.	

To which the Aſſurers objected, that as there were actually 4000 Dollars on board, which were each worth Rp^ta. 10 ⅝, this whole Sum, being Rp^ta. 42500, or 5312 Dollars, 4 Rp^ta. could have been demanded of them in caſe of Loſs, making at 40 Pence *per* Dollar - - *L.* 885 : 8 : 4 N°. B.

And that it was cuſtomary beſides, to add the Premium to the Value inſured, at 5 *per Cent.* 44 : 5 : 5

L. 929 : 13 : 9

Conſequently of the *L.* 2000, the Return ought only to be made on - 1070 : 6 : 3

L. 2000

CASE IV. " Now in order to decide this Difference, it muſt be premiſed, that when no particular Valuation is made of any " Goods inſured, no more can then be demanded of the Inſurers, than what the Thing ſo inſured is actually worth to " the Aſſured, or would have produced had it arrived in " Safety."

And though it is notorious, that the Dollars which come regiſtered from the *Spaniſh Weſt-Indies* are worth at this Time 10 $\frac{5}{8}$ Rp^ta^. in *Old Spain*, yet are they not ſo till delivered free
N°. C. on Shore there, which cannot regularly be done, without deducting

2 *per Cent.* for Freight and Maeſtre de Plata.
9 ditto for Indulto and Marina.
1 ditto for Conſulage and the Church.
1 *per Mill.* for Almirantage.

And when it is for Account of a Foreigner,

2 *per Cent.* for Commiſſion to his Correſpondent at *Cadiz*.

Conſequently each regiſter'd Dollar is worth ſo much leſs to the Merchant at *London*, as theſe ſeveral Sums amount to, which are to be deducted from the 10 $\frac{5}{8}$ Rp^ta^. Becauſe the Captain, the King, the Conſul, the Factor, *&c.* have a Right of retaining their Dues.

N. D. Though it be on the other hand cuſtomary to add the Premium of Inſurance to the Value of the Goods ſhipped, yet this ought only to take Place, when the Value of the Goods in ready Specie from one Place to another can be aſcertained by a regular Courſe of Exchange, by which Means ſuch Money can be remitted in Bills of Exchange, without running any Riſk of the Sea.

N°. E. But a Difference is to be made when the Reduction of the Goods from the *Spaniſh* or *Portugueſe Weſt-Indies* is regulated by the Value of ſuch Money, which is itſelf brought from thence in Specie, when the Riſk of the Sea muſt be run on the ſame, as well as on the Goods, in which Caſe an Addition of the Premium is not allowed. In the Caſe before us therefore; there ſeems not to be a ſufficient Reaſon on the Side of the Inſurer to put a greater Value on the Dollar now the Premium is to be returned, than what could juſtly have been demanded of him for the ſame in Caſe of Loſs. On the other Hand it would be wrong on the Part of the Aſſured, if he deducted the accidental extra Charges

of

of $2\frac{1}{2}$ *per Cent.* Donative, 9 Rp$^{ta.}$ for bringing from *St. Ander*, and $1\frac{1}{4}$ *per Cent.* for Expences at *Reynoſa*, &c. for no body could have thought of thoſe Charges had the Ships been loſt; in order then to make a true Account, it ought to be ſtated in the following Manner; CASE IV.

There were regiſtred, - - *Dollars*	4000		
To be deducted			
For Freight, Indulto, Conſulage, and the Church, as above ſpecified, at 12 *per Cent.* - - -	480		
Almirantage at 1 *per Mill.* -	4		
Deſpacho - - -	2		
Commiſſion at *Cadiz*, when it is for Foreigners Account - - -	70 2		
		556	2
Dollars	3443	6	
At 10 $\frac{5}{8}$ Rp$^{ta.}$ at 40 Pence *per* Dollar -	£	762	5 9
Upon this Footing the Return of the Premium to be made is for - - -		1237	14 3
	£	2000	

And in this Manner the Affair was then adjuſted.

Here a Difference is to be obſerved, that when the Silver comes to *England* by the Way of *Jamaica*, then the Value of ſuch a Dollar of 10 $\frac{5}{8}$ Rp$^{ta.}$ is to be calculated ſo much higher as it coſts leſs Freight and Charges to bring them that Way: Or if ſuch Silver is valued at the Courſe of Exchange, at which Bills are remitted at the ſame Time from *Jamaica*, then the Premium of Inſurance may be added thereunto. Another Queſtion is, how high the Value of ſuch a Dollar may be calculated in reſpect to the Inſurers, when the ſame come unregiſtred from the *Spaniſh Weſt-Indies*, and there is paid for them as uſual 4 *per Cent.* for the ordinary Carriage and Freight, and 4 *per Cent.* more, to clear and fetch them from on board? The Anſwer is: That altho' ſuch a Dollar coſts the Owner but 8 *per Cent.* Charges in this Manner, yet, in reſpect to the Inſurer, it ought to be looked upon as if it had come regiſtred, ſince it is reaſonable that this Difference ſhould be reckoned for the Riſk of being contraband, which properly concerns the Owner thereof only, and with which the In- N°. F.

ſurer has nothing to do. But to avoid all Diſputes in ſuch Caſes, the beſt Way is to have the Dollars valued at a certain Price in the Policy.

CASE V.

Shewing how, upon the Loſs of a Spaniſh *Silver Flota, the Charges of Salvage were divided, partly as a general Average upon the Treaſure of the whole Fleet, partly as a particular Average upon each Ship, and partly upon each Species of the Goods ſaved.*

CASE V. IN the Year 1733, the *Spaniſh* Silver Flota, conſiſting of 4 Men of War, 14 Merchantmen, and 1 Advice Boat, which was commanded by General *Don Rodrigo de Torres y Morales*, in their Voyage from *Vera Cruz* and *Havanna* to *Cadiz*, in the Mouth of the Channel of *Bahama*, met with a violent Hurricane, which drove them on the ſmall Iſlands called *Los Martyres y los Cayos de Matacumbe*, and they were all caſt away and ſunk upon the Sands and Rocks there, except one King's Ship, one Merchantman, and the Advice Boat.

Under this terrible Diſaſter, it was of peculiar Advantage to all that were concerned in the Treaſure, that it happened in a Country which was not inhabited, where there was no Apprehenſion of plundering or killing by the Inhabitants, otherwiſe too frequently practiſed, nor of Embezzlement or Deſertion of the Sailors, beſides that the Salvage was entruſted to ſuch Perſons as acquired no ſmall Reputation by the ſame. For a laſting Memorial whereof here follows an Extract of the Account and Repartition of all the Charges of Salvage upon the Treaſure and Goods ſaved, as printed by them at *Cadiz*;

N°. A. On the *Capitana* called *El Rubi*,

Paid for Freight of the Veſſels which carried what was ſaved to the *Havanna*.

For the Bilander N° 2. called *la Gallarda* to *P---- de E-----*, ſhe carried 415 Cheſts of Silver - - *Dollars* 700

For the Galliot N° 3. called *St. Joſeph y*

las

CASE V.

las Animas, which carried 69 Serrons of Cochineal to *T----y D---- G----* - 250

For the Pacquet Boat N° 4. called *N^ra. S^a. de los Dolores*, which took 4 Cheſts of Silver, and 4 Serons of Cochineal on board, out of the *Capitana* - 32

For the Bilander N° 7. called *S. Franciſco Xavier*, which carried ſick Paſſengers and Trunks out of this Ship - 300

For Ditto, on a ſecond Voyage, when ſhe brought 43 Serons of Cochineal, and 7 ditto of Indigo - - 250

For the Bilander N°. 10. *S. Franciſco Xavier y las Animas*, for 188 Cheſts Silver, and 3 Cheſts Theſoreria - 900

For Ditto - - -, on a ſecond Voyage, with 299 Cheſts Silver, 8 ditto *de las Andas de la Virgen*, 1 Cheſt *de Achiote*, 1 with Linnen, 1 with *Ruſſia* Hides, 1 with Tobacco, 1 with Vanillas, and 2 with Bucaros - - 600

For the Bilander N°. 11. *N^ra. S^a. de la Merced*, for 200 Cheſts Silver, and 24 Plates of Copper - - - - 900

For ditto N°. 11. having brought among the reſt 33 Serons Cochineal, for the *Engliſh Aſſiento* Company, for which ſhe demanded no Freight.

For the Bilander N°. 12. *N^ra. S^a. del Carmen*, for 112 Cheſts Silver - 250

For ditto, for 12 Cheſts with ſundry Things, 1 Cheſt with Flaſks, and 10 Serrons Iron Ware - - - - - - - 36 : 2

For the Bilander N°. 14. *Santa Cruz de la Parra*, to carry over ſome of the People - - - - - - - - - - 200

For the Brigantine N°. 15. called *El Juan* for 300 Cheſts Silver - - - - 1300

For ditto, the ſecond Voyage, for 197 Serrons Cocheneal, 4 Cheſts Indigo,

5 Cheſts

CASE V.

5 Cheſts Silver, and 48 Cheſts wrought Plate, with one Barr of Silver - - -			968 : 3
For the Bilander N°. 24. *La Philipa*, to bring over ſome People - - - -			200
For the Bilander N° 25. *La Paz*, for 400 Cheſts Silver - -			1000
For ditto, on a ſecond Voyage, 4 Cheſts Silver Coin, 1 Cheſt wrought Plate, 215 Serons Cocheneal, and 150 Cakes of Copper - - -			995 : --¾
For ditto, the third Voyage, for 128 Serons Indigo, and 400 Cakes of Copper -			500
Paid for Diving Charges.			
For 1898 Cheſts of coined Silver, each of 3000 *Dollars*, make 5694000 *Doll.* At 1 *per Cent.* as by Agreement -			56940
For 25 Cheſts ditto, of 3000 *Dollars*, at 1 *per Cent.* - - - - - - - -			750
For 4 Cheſts coined Silver of 3000 *Dollars* by particular Agreement at 4 *per Cent.*	480		
36 Serons Cochineal - -	72		
			552
For 652 Parcels Cochineal, and Indigo, at 2 Dollars 55 Cheſts wrought Plate, at 7 Dollars		1689	
Deduct the Overplus charged above on 4 Cheſts Silver		360 : 7	
			1328 : 1
		Dol.	59570 : 1

N°. B. From which Sum, ſo much as is equivalent to the Silver for the King, muſt be deducted in this Account, and carried afterwards among the general Charges, becauſe at a Meeting of the Merchants it was agreed to keep the King harmleſs - - 7075 *Dol.* 52495 : 1

For

CASE V.

For Salvage to the Ship's Crew.

To the Sailors it was agreed to give 49500 Dollars in the Whole, for their Trouble and Aſſiſtance in the Salvage; of which Sum, according to the Diſtribution that has been made, there is equivalent,

To the Silver by the *Capitana*, -	*Dol.* 18990 : 5	
To the Cochineal and Indigo -	2121 : 5	
		21111 : 5

N°. C.

Want or Loſs on the Silver which was regiſter'd for Particulars.

For 12132 Dollars, 4 Rials, which the Commerce in general is anſwerable for, according to a Declaration of the *Maeſtro de Plata* - -	12132 : 4

Charges which concern the Silver only.

For Carriage and Warehouſe Rent, with other Charges on the Silver out of the *Capitana*, except upon the King's Silver, which have been reckoned among the general Charges -	1207 : 5

Expences in curing of the Cochineal.

For drying, *&c.* of 4145 Arrobes, 23 *lb.* 5 *ounz.* wet Cochineal - - (is 6 Rials $\frac{3}{10}$ for each Arrobe)	3377 : 1 $\frac{1}{2}$

Charges on the Indigo.

Paid for 995 Arrob. 4 *lb.* Indigo makes on each Arrobe 1 $\frac{3}{8}$ Rp^{ta}. -	171 : 0 $\frac{1}{4}$

PRESENTS.

To divers Seamen, for aſſiſting in the Salvage, according to a Writing of Don *Luis de Miranda* -	5840

Further Want and Loſs on the Silver.

Paid for Want on ſome Cheſts of Silver to ſundry Perſons. - -	208 : 4

Fur-

CASE V. *Further Charges on the Silver.*

	For ſo much of the Carriage and Porterage of the Silver falls to this Ship's Account - - -		218 : 4
	For bringing the Silver out of the King's Cuſtody, as above -		114 : 7
	For *el Eſlingaje* of 1748 Cheſts Silver, regiſter'd for Account of Particulars, to the *Contra Maeſtro* of the *Capitana*		218 : 4
N°. D.	(The King's Silver bears none of theſe Expences.)		
	For the Proportion of the general Charges, which falls on the Value of every Thing that was ſaved, and was the Property of private Perſons,		
N°. E.	Upon the Silver at 9 $\frac{1}{4}$ Rp^{ta}. *per* 100 Dollars	*Dol.* 64082 : 2	
	Upon the Cochineal at 9 $\frac{1}{4}$	1291 : 5	
	Upon the Indigo at 9 $\frac{1}{4}$	44 : 4	
			65428 : 3
			Dol. 171869 : 4 $\frac{1}{2}$

Havanna, the 21ſt of *April*, 1734.

Don JOSEPH DIAS DE GUYTIAN,
Don MATTHIAS BUSTILLO Y GARCIA,
Don JUAN JULIAN DE MONSALVE,
Don JUAN FELIX DE ANDRADE,
Don JOSEPH DE ESCURDIA.

Extract

CASE V.

Extract of the Account of the Charges to be divided upon the Silver, the Fruits, and other Effects of the Fleet that was loſt, in general.

Havanna, in the Years 1733, 1734.

FOR the Purchaſe of an Advice-Boat to carry an Account to the King, and the College of Commerce at *Cadiz*, of the Accident that had happened, *Dollars*	9000	
For Expences at the ſolemn Proceſſion with an Image, called *la Santiſſima Virgen del Roſario* -	971	N°. F.
For Expences of a Feaſt of Thankſgiving kept in Honour of her during eight Days - - -	1435 : 4	
For a Pilot-Boat to carry Advice of the Shipwreck from *los Cayos* to the *Havanna* - - -	12 : 4	
For Proviſions furniſhed by the King's Officers at the *Havanna* to the *Capitana*, the *Almirante*, and to the other Ships loſt, and for the Hire of a Veſſel, which was ſent to the Viceroy in *New Spain*: Likewiſe for victualling and fitting-out the Advice-Boat for *Old Spain* - - -	46721	
For Proviſions furniſhed by one of the Merchants, for his own and other Paſſengers Subſiſtence on the Voyage from *Matacumbe* to the *Havanna*	14	
For petty Charges to unload ſome of the Merchandize which came by the King's Ships - - -	44 : 3½	
For Proviſions ſent to *los Reales* -	671 : 6	
Paid to the Sailors in full Satisfaction for the Salvage of the whole Treaſure and the Fruits 49500 Dollars in all, whereof belongs to this Account -	12231	

CASE V. N°. G. For Charges, and Decreaſe or Want in the Royal Capital, which the Chamber of Commerce have agreed to indemnify - - - 2950 : 3 ½

For cleaning the King's Silver, as before 736 : 2

Paid to ſundry Perſons for giving Aſſiſtance in ſaving of the Treaſure for the Benefit of Commerce 15735 Dollars, whereof belong to the general Charges 5500

To ſome others, as above - 28400

For Carriage and Porterage of ſundry Things, which ought to come into this Account - - 54 : 2 ½

For Part of the Wages for unloading the King's Silver out of the *Capitana* 2625 : 1

For Wages for unloading the King's Copper out of the ſame - - 180

For Fees to the Divers of 727773 Dollars ſaved for the King's Account out of the *Capitana*, which the Chamber

N°. H. of Commerce have conſented to bear 7075

For ditto of 5 729 951 Dollars out of the *Almirante* as above - 7065 : 4

To *B*—— *de R*——, Owner of the Bilander *Nra. Sra. del Carmel*, which was ſent out from the *Capitana* to give a Look-out, and to fetch Water - 300

To *M*—— *de T*——, Owner of the Bilander *Sant Andero*, which carried the Perſon to the *Havanna*, that was to acquaint the Governor and the Reſt of the King's Officers with the Shipwreck 300

For a Bilander *S. Miguel y las Animas*, to carry over the Materials and Effects of ſeveral Ships, whereof the *Capitana*'s Share - - - 491

To Don *N*—— *de A*——, Owner of the Bilander *la Paz*, who as ſoon as he ſaw the Misfortune of the Fleet, ſailed directly to the *Havanna*, to give Ad-

vice

CASE V.

vice thereof to the Governor, and ſerved as a Guard to the King's Men of War, and the other Ships - 1000
To the ſame for carrying over the Ship's Materials and other Things belonging to the *Capitana* - 1000
—— 3091

N°. I.

To Charges of unloading the King's Silver, Copper, and the Ship's Materials out of the *Almiranta*, and putting the ſame on board again - 1719 : 3
For Carriage, Warehouſe Rent, and other Charges on the King's Silver - 334 : 7
To Don *P*—— *C*——, Owner of the Bilander *Jeſus Nazareno*, for a Voyage which he made to the King's Ship, the *Almiranta*, to fetch ſome of the Ship's Materials - - 450
To *N*—— *G*——, for his Trouble about this Ship with his *Piragua* - 200
—— 650
To Sundry, which aſſiſted the King's Ships that were loſt, and ſerved for a Watch and Guard upon what was ſaved - - - 5589 : 4
For Meat, provided by the Care of the Governor, for the Service of the King's Ships - - 1000
For ſundry Proviſions ſent by Don *J*—— *de E*—— to the Ships *Almiranta* and *St. Franciſco* - - - 603
For cleaning the Silver Ornaments of the aforeſaid Image - - 761 : 4½
For a new Veſtment to adorn the ſame on a *Novenario*, and for Maſſes for a happy Voyage - - 309 : 2

N°. K.

For Wax Flambeaux and Lights to illuminate the ſame, and conduct it on board of the Ship - - 888

Dollars 140634 : 3

CASE V. Which general Charges being divided upon the Value of every Thing saved out of all the Ships that were lost, and amounted to 11 - 541 - 524 Dollars and ½ Rials, make for every 100 Dollars to pay 9 ¾ Rials de Plata.

N°. L.

Havanna, the 21st of *April*, 1734.

Don JUAN FELIX DE ANDRADE,
Don JOSEPH DIAS DE GUYTIAN,
Don JUAN JULIAN DE MONSALVE,
Don MATTHIAS BUSTILLO Y GARCIA,
Don JOSEPH DE ESCURDIA.

An Account of the Division of the Charges expended on the Capitana, *amounting in the Whole to* 171869 *Dollars*, 4 *Rials. Whereof belong to the Silver, for Account of private Persons:*

FOR Freight paid to sundry Bilanders from the Place where the Shipwreck happened to the *Havanna*				*Dollars*	9345 : 5
Deduct so much as concerns the Indigo and Cochineal;					
Galiot	N°. 3.	69 Serons	*Dol.*	250	
Packet-boat	4.	4 ditto	-	16	
Bilander	7.	50 ditto	-	250	
Bilander	11.	33 ditto	-	000	
Brigantine	15.	201 ditto	-	766 : 2 ½	
Bilander	25.	222 ditto	-	825 : 4 ½	
Bilander	25.	128 ditto	-	200	
				2307 : 7	
				Dol. 7037 : 6	
For Expences of diving -					51119 : 1
For Wages to the Seamen for their Labour in the saving, unloading, and reloading - - -					18990 : 5
For a Proportion of the Gratifications to the Ship's Officers, that assisted in the Salvage - - -					5719 : 7

For

CASE V.

For Deficiency in the registered Silver allowed to the *Maestre de la Plata* by the College of Commerce -	12132 : 4
For Warehouse Rent, and carrying the Silver thither from the Key -	1207 : 5
For Deficiency found by some Persons in their Chests, which were saved -	208 : 4
For Cartage - -	218 : 4
For Porterage to put the Silver on board again - - -	114 : 7
For Eslingaje - - -	218 : 4
For the proportionable Share of the general Charges - -	64082 : 2
Dollars	161050 : 1

Which divided upon 5 - 270 - 167 Dollars 4 Rials of Silver, make for every 100 Dollars in the *Capitana*, 24 Rials 15 $\frac{1}{5}$ Maravios. N°. M.

On the Cochineal.

For Freight and Carriage of the Cochineal and Indigo from *Matacumbe* to the *Havanna*, 2307 Dollars 7, whereof the Proportion on 4145 Arob. 23 *lb.* of the first is - - -	*Dol.*	1861 : 1 $\frac{1}{2}$
To the Divers 1376 Dol. for both, is		1109 : 5 $\frac{1}{2}$
To the Seamen 2121 Dol. for both, is		1710 : 4
For curing the Cochineal - -		3377 : 1
To the Ship's Officers for Presents 5840 Dollars; which divided upon 5 - 368 - 495 Dollars 7 $\frac{1}{4}$ Rials makes in Proportion		
On 4078 Arob. 23 : 5 a 25 Dol. } 67 - - 60 }	105 : 981 *Dol.* 6 *Rials*	115 : 2
For general Charges on ditto at 9 $\frac{3}{4}$ Rials *per* 100 Dollars - -		1291 : 5
	Dol.	9465 : 3

Which divided on 4145 Arrob. 23 *lb.* is upon each Arrob. 18 Rials 9 Marr. in Cochineal.

To

CASE V.

On the Indigo.

For Freight and Carriage of the Indigo and Cochineal together as above, 2307 Dol. 7 Rials, the Proportion on 945 Ar. 4 *lb.* - - - -		446 : 5 ½
To the Divers, as above, for 688 Parcels at 2 Dollars, is 1376 Dollars -		266 : 2 ½
To the Seamen as before	*Dol.* 410 : 4	
For curing of the Indigo	171	
To the Ship's Officers, as before, of 4478 Dol. at 1 ⅜ *per Mill.*	4 : 7	
For general Charges on ditto at 9 ¾ Rials - -	54 : 4 ¼	
		1353 : 7 ¼
Divided upon 995 Arrob. 4 *lb.* is equal to 10 Rials 30 ⅑ Mar. on each Arrobe of Indigo - - -	*Dol.* 171869 : 4 ½	

N°. N.

Havanna, the 21ſt of *April*, 1734.

Don JOSEPH DIAZ DE GUYTIAN
Don JUAN JULIAN DE MONSALVE,
Don MATTHIAS BUSTILLO Y GARCIA,
Don JUAN FELIX DE ANDRADE,
Don JOSEPH DE ESCURDIA.

In the ſame Manner the Account of the King's Ship the *Almirante* was formed, and the Charges at the *Havanna* amounted

N°. O.

Upon every 100 Dollars Silver to 20 Rials 20 Maravedis
Arrobe of Cochineal to 17 - 25
Arrobe of Indigo to 9 - 4 ⅞

The Particulars of this Account were not communicated to the Foreigners that were concerned, nor to the Inſurers abroad; but they contented themſelves with being informed in general, that this extraordinary Average of 6 *per Cent.* upon the Silver had been ſettled between the Proprietors and the Inſurers in *Cadiz* at 6 ½ *per Cent. viz.* 3 *per Cent.* for Salvage, and 3 ½ *per Cent.* for conducting it home, wherewith they were ſatisfied without further Enquiry.

It

It was indeed ſomething ſurprizing, that no more of the Treaſure was loſt, ſince both the *Capitana* and *Almirante* lay under Water, and all that was ſaved out of them, was obliged to be fetched out by Divers. That Circumſtance induced the foreign Inſurers without Doubt to make no Objection to this Regulation, which otherwiſe they would in all Probability not have failed to have done againſt the following Articles, had they had a Sight of the Particulars of the above Account CASE V.

971 *Dollars* -
1435 -
761 -
369 -
888 - } for the Holy Virgin. N°. P.

Although upon the Capital of 11 Millions of Dollars it amounted but to a Trifle.

And perhaps they would have taken as much Exception againſt the generous Behaviour of the College of Commerce, in not only taking on themſelves all the Charges of Salvage for the King's Ships and his particular Treaſure, but including likewiſe in the new Voyage, or Charge of bringing home the full Value of the 3 King's Ships: that were loſt without any Conſideration; the former Charges conſiſted in the following Articles:

2950 *Dollars* -
736 -
180 -
7075 -
7065 - } 21066 Dollars together. N°. Q.
491 -
1719 -
334 -
450 -

Againſt the Sums of 12132 Doll. 4 and 208 Doll. 4 Rpta which were either deficient belonging to private Perſons, or elſe were not ſaved, it might have been alledged, that in as much as the Cheſts, in which they had been, could be diſtinguiſhed by their Marks, every one ought to have ſtood to their own Loſs. N°. R.

But

CASE V. N°. S. But in general all, or ſuch like Objections of the Abſent ſhould give way to the Opinion of thoſe, that are on the Spot, and it is but reaſonable, that when in Caſe of a Shipwreck it is agreed by a Majority of Votes, among thoſe, which repreſent the Proprietors (before a Beginning is made with the Salvage, and when it is uncertain to whom Fortune may be moſt or leaſt favourable) that every Thing, which may be ſaved, ſhall come into a common Stock, that then the Right, which otherwiſe every Particular has, to claim his own Property, ceaſes. Beſides as the Body of Merchants reſiding at *Cadix*, which were directly concerned, did approve of the above Adjuſtment, the Objections of thoſe, which were only indirectly intereſted therein, could not avail any Thing. And ſo far as Foreigners had voluntary expoſed themſelves with Goods for their Account, or with Aſſurances under the Direction of Spaniards, they muſt be content, to have the ſame decided according to Spaniſh Laws and Cuſtoms. (*Eſſay* § 9.)

When theſe Effects, which were ſaved, arrived at *Cadix*, it was to be obſerved, particularly with Reſpect to the damaged Cocheneal and Indigo, that probably ſome of the Foreigners concerned therein, would deſire, to receive their own identical damaged Goods, others on the contrary might inſiſt on the Sale of the damaged Goods, in order to receive from the Inſurers the Satisfaction for the Loſs on their Goods without further Difficulty, wherefore the following Expedient was pitched upon by *N. M.* for Don *G. H*, to ſell part of the Cocheneal, and to keep the Remainder at the ſame Prices, which the other was ſold for, as appears by the following Account, others followed the ſame Example, and as far as appears, it met with general Approbation.

N°. T. Account of the Amount of Sixty Serons Cocheneal, ſaved out of the laſt Flota, which arrived from *Vera Crux*, half by the Ship *Almiranta*, and half by the *Infante*, ſhipped by Don *A. Y. de V.* to the Conſignation of Don *G. H.* who depoſited them in *my Houſe* as ſoon as they were delivered to him, out of the Warehouſes, and there they were viewed by two Perſons well verſed in Trade, and what related to the Weights and the Charges at the *Havanna* (an original Account whereof he delivered along with them) was by them ſettled according to

to the Testimonies of the *Escrivano de la Contractacion*, and the Accounts of Don *J. de la C.*, the Value and Amount being as follows: CASE V.

Out of the *Almirante* N°. V.

Of 30 Serons registred at *Vera Crux* for 252 Arrobes 11 lb. 4 Neat, there were saved and delivered to Don *J. de la Cour* at the *Havanna*

185	*Arr.*	5 : 13	quite damaged
11	-	11 : 8	half damaged
24	-	3 : 15	found
in 34 Serons	220	*Arr.* 21 : 4	*Neat.*

At *Cadiz* there were found to be 29 Serons entirely damaged, weighed:

N°.			*Arr.*		
1	:	7		11	: 10
3	:	6	-	22	: 12
4	:	6	-	22	: 8
7	:	6	-	23	: 6
8	:	6	-	12	: -
13	:	6	-	11	: 14
15	:	6	-	-	: 6
16	:	6	-	14	: 1
17	:	6	-	11	: 14
18	:	6	-	9	: 8
19	:	6	-	10	: 10
20	:	5	-	23	: 8
23	:	6	-	4	: 10
27	:	6	-	12	: 5
29	:	5	-	6	: 15
		96	*Arr.*	22	: 15
		91	-	1	: 8
		187	*Arr.*	24	: 7
Tare		1	-	13	: 1
		186	*Arr.*	11	: 6

N°.			*Arr.*		
31	:	6		9	: 8
24	:	7	-	11	: 2
32	:	6	-	13	: 14
33	:	7	-	5	: 8
37	:	6	-	-	: -
42	:	6	-	-	: -
43	:	6	-	14	: 14
44	:	6	-	7	: 12
45	:	6	-	9	: 14
46	:	6	-	1	: 6
47	:	6	-	19	: -
48	:	6	-	2	: 12
51	:	6	-	11	: 2
52	:	6	-	19	: 12
		91	*Arr.*	1	: 8

Which being opened and examined one after another in the Presence of Don *J. J.* and of Don *J. J. de M.*, 7 of the Serons N°. W.

CASE V. rons were found ſomething leſs damaged, than the remaining 22 Serons, and the ſaid two Perſons being ſworn Brokers having drawn Samples out of them, and uſed their Endeavours to ſell them, they reported, that the Price for thoſe, which were leaſt damaged was 86 Dollars, at which Price part thereof was actually ſold to Mr. *L. C.* and to Don *H. E.*, and for them that were the moſt damaged 65 Dollars, at which Rate ſome of it was likewiſe diſpoſed of to Mr. *B. D. de G.* and Don *H. E.*, accordingly the Account was made up:

of 7 Serons, cont. 46 Arr. 10 : 5 a 68 Doll. *Rpta* 25248
22 - - 140 - 7 : 1 a 56 - - 62846

186 - 17 : 6

2 Serons partly damaged, weighed
N°. 2. 7 Arr. 7 : 14
41. 3 - 20 : 12

11 Arr. 3 : 10
Tare - 2 : 12

11 Arr. - 14 ſold to Mſſ. *L.* and *V. H.* a 70 Duc. 8491

3 Serons found, which weighed at *Cadiz*
N°. 10. 7 Arr. 14 : -
35. 7 - 8 : 8
39. 6 - 12 : -

21 Arr. 9 : 8
Tare - 4 : 2

21 Arr. 5 : 6 a 90 Duc. 21000 : ½

Rp. 117585 : ½

CHARGES.

CHARGES.

To the Divers in Plata doble 504 Doll.
3½ R. a 126 *per Cent.* *Rp.* 5085
Freight of 244 Arr. 11 : 10 a 9¼ Rp.
2200½ R. *Doll.* 220

KING's DUTIES.

185 Arr.	5 : 13 a 54	Dol.	*Rs.*	80020
11	11 : 8 a 75 : 1½	-		6890
24	3 : 15 a 84 : 4½	-		16342
			Rs.	103252

are Dol. 10325 : 1½ with the Augmentation in the Project from 82 to 100 Duc. are 12591½ Dol. a 5 *per Cent.* - - 629 : 6 : 5
Guards of the Coast for 10325 Dol. 1½ a 4 *per Cent.* - - 413 : 0 : 5
1262 : 6 : 15
Deduct from 504 Dol. 3½ a 10½ - 52 : 9 : 22
1209 : 6 : 27
a 10 *Rs.* - - - *Rpta.* 12096¾

Freight of the second Embarkation.

For 196 Ar.	17 : 5 a 25 Dol.		*Dol.* 4917 : 2	
24	3 : 15 a 60	-	1449 : 4	
			Dol. 6366 : 6	
	a 3½ *per Cent.* Dobles	-	222 : 7	2228¾
Consulage a 1 *per Cent.* in current Money		- - -	63 : 5	509
To the Church a ¼ *per Cent.*		-	15 : 7	127
				Rpta. 20046½

CASE V. According to the original Account of Don *J. de la C.* the Charges at the *Havanna* upon 371 Arrob. 14 lb. of Cochineal, amounted in the Whole to 156 Dol. 3, which upon 220 Arr. 8 : 9 is equivalent to 92 Dol. 6.

a 126 *per Cent.*	*Rs.*	934 ½
For Dispatches at the Custom-House	-	16
For the necessary Certificates	- -	12 ¾
For Warehouse Rent	- - -	172
For Brokerage of the Inspection, and of the Sale, a ½ *per Cent.*	-	587 ½
For Commission of the Sale, a 2 *per Cent.*		2351 ¾
		24121 ¼

Remain for the nett Proceed *Rpta.* 93464 ¼

N°. W. Which, after deducting the Charges and Average, being divided upon 252 Arr. 11 lb. 4, produces for each Arrobe 370 ¼ Rpta.

Out of the Patache called *el Infante*, for 30 Serons which were registered at *Vera Cruz* for 245 Arr. 3 lb. neat, were delivered to Don *de la C.* at the *Havanna*, 19 Serons weighing 147 Arr. 18 : 1 neat, which 19 Serons weighed at *Cadiz*

N°.	5 : 7	Arr. 21 : 12	N°.	21 : 7	Arr. 15 : 4
	6 : 8	7 : 2		22 : 8	10 : 6
	9 : 7	17 : 8		25 : 6	17 : 0
	11 : 8	3 : 12		26 : 9	1 : 7
	12 : 7	18 : 13		28 : 8	5 : 4
	14 : 8	1 : 8		30 : 8	22 : 14
	47	Arr. 20 : 7		48	Arr. 22 : 3
N°.	34 : 7	Arr. 18 : 2	N°.	49 : 8	Arr. 11 : 0
	36 : 8	1 : 8		50 : 7	5 : 7
	38 : 7	15 : 8		53 : 8	0 : 0
	40 : 8	12 : 6			
	31	Arr. 22 : 8		23	Arr. 16 : 7
	47	20 : 7			
	48	22 : 3			
	23	16 : 7			
	152	Arr. 6 : 9			
Tare a 22 *oz.*	1	1 : 2			
	151	Arr. 5 : 7			

Which

Which having been examined, as abovementioned, there were found CASE V.

11 Serons leſs damaged
87 Arr. 19 : 4 a 68 Dol. *Rp.* 47746 ¾
8 ditto 63 11 : 3 a 56 - 28424 ¼
76171

CHARGES.

For the Divers 394 ½ *Dol.* at 126 *per Cent.* Rials - 3962
For the King's Duties of 147 Arr. 18 : 1, at 54 Dol. 63816 Rials, are 6381 Dol. 5, with the Augmentation from 82 to 100 Ducs. make 7782 Dol. a 5 *per Cent.* - *Dol.* 389 : 1 : 12
For Guards of the Coaſt 6381 Dol. 5 a 4 *per Cent.* - - 255 : 2 : 21
For Freight of 160 Arr. 23 : 1 a 9 Rials - - - 144 : 8 : 10
789 : 2 : 9
Deduct 10 ½ *per Cent.* from 392 ½ Dol. 41 : 2 : 23
747 : 9 : 20
a 10 Rials - - 7479 ¾
11441 ¾

Freight of the ſecond Embarkation for 147 Arr. 18 a 25 Dol. are 3693 Dol a 3 ½ *per Cent.* doble 128 Dol. 3 - - - *Rp.* 1283 ¼
For Conſulage and the Church, in current Money, Dol. 46 : 1 369
According to the original Account of Don *J*---. *de la C*---, for 371 Arr. 14 *lb.* 156 Dol. 3, is equal for 151 Arr. 5 : 7 to 63 Dol. 5, Plata doble a 126 *per Cent.* - - 641 ½
Diſpatches at the Cuſtom-Houſe and Certificates - - - 30 ¼
Warehouſe Rent and Porterage 99

Bro-

CASE V. Brokerage of the Inſpection and Sale
a $\frac{1}{2}$ *per Cent.* - - - 380 $\frac{1}{2}$
Commiſſion of the Sale 2 *per Cent.* 1523 $\frac{1}{2}$
15770

Remain for the neat Proceed *Rp.* 60401

N°. X. Which, after Charges and Average deducted, being divided upon 245 Arr. 3 *lb.* make 246 $\frac{1}{2}$ Rp^ta. for each Arrobe.

Cadiz, December 15, 1734.

N—— M——.

In *London* there had been Inſurance made with the *R--- E----* C°. for £. 3000 Sterl. upon Returns expected from Don *A. Y. de V.* for Don *G. H.* by the *Capitana*, and *Almirante*, half by each; and in the Policy were declared the Marks and Numbers of the Goods ſent out, as well as what Intereſt the Aſſured had in them, and from whence theſe Returns were to proceed; by which Means it was ſufficiently demonſtrated, that the Proportion of the Cochineal ſhipped by the ſaid *V.* for the Sum inſured, was

of 10 Ser. 86 Arr. 18 : 6 $\frac{1}{2}$ 30 Arr. 5 : 6 a 83 $\frac{1}{2}$ Dol.
50 411 23 : 14 117 17 : 7 a 89 $\frac{1}{2}$ Dol.

(from which 6 Dollars *per* Arrobe were deducted for the buying it at *Vera Cruz* on Time)

therefore of 497 Arr. 16 : 20 $\frac{1}{2}$ we reckon
all the above 147 Arr. 22 : 13 a 83 $\frac{1}{2}$ Dol. *Dol.* 12350 : 5 $\frac{1}{2}$
Charges - - - 100 : 1 $\frac{1}{2}$

Dol. 12450 : 7

Commiſſion of buying at *Vera Cruz* a 4 *per Cent.* - - - 498

12948 : 7

Further for the uſual Freight and Indulto from thence a 11 $\frac{1}{2}$ Dol. - 1489

Dol. 11459 : 7

Which Dollar were at that Time worth in *Cadiz* a 10 Rials Rp^ta. *Rp.* 114597

Con-

CASE V.

Conſequently for half the Intereſt which came by the *Almiranta*, as aforeſaid, the prime Coſt of 73 Arr. 23 *lb.* 14 ½, was - - - *Rpta.* 57298 ½

But as they arrived damaged, and according to the above Account produced only 370 ½ Rpta. *per* Arr. is - - 27382

the Loſs to be demanded would be - *Rpta.* 29916 ½ N°. Y.
which is 52 ⅕ *per Cent.* upon the firſt Coſt.

In Oppoſition hereunto Mr. *Gr.* required on Behalf of the *R. E.* C°.

Firſt, The real Coſt at *Vera Cruz*, with all Charges delivered on board.

Seconaly, To know the Difference in the Weight between *Vera Cruz* and *Cadiz*, and was of Opinion

Thirdly, That the C°. was to be charged with the Expences of Salvage only, but not with the ordinary Charges.

Fourthly, That the Loſs on the Cochineal ought to be calculated in Proportion to the Prices, at which it might have been ſold if ſound, and which it had fetched now it was damaged.

Fifthly, That for what was wanting in Weight, ſo much as the firſt Coſt thereof amounted to, ought to be reckoned.

Now in order to form the Account according to the C--y's own Principles, it was firſt proved by Atteſtations upon Oath from Merchants and Brokers, that the ordinary Loſs, and uſual Waſte in the Weight between *Vera Cruz* and *Cadiz* amounts from 2 to 3 *per Cent.* conſequently theſe 73 Arr. 23 ½ *lb.* if they had arrived ſound at *Cadiz*, would have weighed there, deducting the 3 *per Cent.*

71 Arr. 18, which at 90 Duc. being the Market Price at *Cadiz*, would have been worth - - *Rpta.* 71003

But

Case V. But now they were damaged, they have been ſold

7 Ser.	46 Ar.	10 :	5	for 68 Dol.	-	*Rpta.*	25248
22	140	7 :	1	56	-		62846
2	11		14	70 Duc.		-	8491
3	21	5 :	6	90	-		21000½
						Rp.	117585½

Hence deduct for extraordinary Charges, Buſeo, or diving Charges *Rp.* 5085
Freight of the ſecond Embarkation 2228¼
Charges of the Averages - 934

- 8247¼

For 252 Arrob. 17 *lb.* - neat *Rpta.* 109337¼

For 73 - 23½ - - 31421
Conſequently the Loſs on - - 71003

is - - *Rpta.* 39582

N°. Z. which is 55¼ *per Cent.*

When the ſaid C°. ſaw that this Account rendered more than the former, they perſwaded the Inſured to accept of the 52½ *per Cent.* at firſt demanded, and allowed for the £. 1500 aſſured on the *Almiranta* 57298 Rpta. a 40 Rlrs.

£. 1193 : 14 : 9 Average a 52½ *per Cent.* £. 623 : 2 : 7
Deduct ½ *per Cent.* - 3 : 2 : 4

£. 620 : 0 : 3
306 : 5 : 3 return'd a £. 3 : 14 - 11 : 6 : 7

£. 631 : 6 : 10

N°. AA. Others calculating their Loſs upon the firſt Coſt, have perhaps left out the 11½ *per Cent.* deducted here above for ordinary Freight and Indulto, and added beſides to the Coſt of 12948 Dol. 7 Rpta. the Premium of Aſſurance of 4 to 5 *per cent.* as it was at that Time, by which Means the Demand of Loſs on the Cochineal may have been increaſed to 60 *per Cent.* See *Caſe* IV. N°. B.

But to judge according to ſtrict Juſtice, even the Addition of 4 *per Cent.* for Commiſſion ought not to have taken Place here: For as each Dollar on coming home would have produced 10 Rials

Rials of Plate (which was then the Value thereof, but now is 10 $\frac{5}{8}$ Rpta.) the 4 *per Cent.* at *Vera Cruz*, as well as the Premium of Aſſurance, Freight and Indulto, muſt have been deducted from thoſe Dollars, and the Proprietors would have received ſo much leſs: Which (as is ſhewn more at large in § 40 of theſe Eſſays, and in the 4th Caſe) is not always ſo readily diſcerned by every Body on ſuch Occaſions. CASE V.

The Calculation of this Loſs, however, ſhould in Equity have been ſettled according to the Difference betwixt the Market Prices of the damaged and ſound Cochineal: And then the Queſtion would have been, Whether the Inſurers were obliged to make good the Loſs at 90 Ducats, or only at 85 Duc. becauſe the Price of ſound Cochineal was before the Arrival of the Flota no more than 85 Duc. and the Riſe of it to 90 Duc. was occaſioned only by Reaſon that much the greateſt Part of the Cochineal by this Flota came home damaged. N°. BB.

It is a decided Point, that an Aſſurer has nothing to do with any Conjuncture, or Profit upon the Goods, or ought to contribute more in the Calculation towards the Loſs on any Goods, than what they coſt, or what he has inſured upon them, as the Ordinance of Aſſurances for the City of *Hamburgh* very juſtly expreſſes, *Tit.* XXI. *Art.* 14. N°. 988, in the following Words: " If it ſhould appear that on a public Sale there was a Surplus " of any Profit and Advance above the Coſt, then the Pro- " prietor is to bear his Proportion of the Average on ſuch Ad- " vance." N°. CC.

Upon the niceſt Scrutiny, the Loſs on the abovementioned Cochineal ought to have been calculated in the following Manner: N°. DD.

CASE V.

73 Arrob. 23 ½ lb. (Weight of *Vera Cruz*) would have weighed at *Cadiz*, if they had arrived found, 71 Arrob. 18 lb. at the Price of 85 Duc. - *Rpta.* 67058 ½

To be deducted,

For Freight of 73 Arr. 23 ½ a 9	*Rpt.* 666	
Indulto a 84 Dol. 4 ½ 49020, 5002 Dol. 6100 Dol. a 5 *per Cent.*	3050	
Guarda Costas, a 4 *per Cent*	2000	
Consulage, a 60 Dol. a 1 *per Cent.*	355	
The Church, a ¼ *per Cent.* -	89	
Petty Expences, a 8 Rpta. -	72	
Brokerage, a ½ *per Cent.* - -	33 ½	
Commission, a 2 *per Cent.* -	1341	
		7606 ½

Rpta. 59452

But now they came home damaged, these 73 Arrob. 23 ½ lb. produced only at 370 ¼ Rpta. - - - 27382

Rpta. 32070

makes the Loss on *Rp.* 59452, to be 53 $\frac{19}{20}$ *per Cent.*

To the Cost of the above 147 Arr. 22 : 13, the 4 *per Cent.* ought not to have been added, but only to have been reckoned - - - - *Dol.* 12450 : 7

Deduct the 11 ½ *per Cent.* Freight and Indulto 1431 : 7

Dol. 11019

a 10 Rpta. - *Rpta.* 110190

The Half whereof came by the *Almirante* to pay by the *R. E.* C°. a 53 $\frac{19}{20}$ *per Cent.*

Rpta. 55095 at 40 Pence. £. 1147 : 16 : 5. £. 619 : 6. *Rpta.* 29723 ¼.

Deduct ½ *per cent.* 3 : 2

£. 616 : 4 : 0

to return the Premium of 352 : 3 : 7 a £. 3 : 14 13 : 0 : 7

£. 1500 £. 629 : 4 : 7

The

CASE V.

The Proprietor himſelf to bear on his Profit a $53\frac{12}{20}$ *per cent.* of *Rp.* 4357 - - - - - 2350 $\frac{5}{2}$

59452 *Rp.* 32073 $\frac{3}{4}$

Difference of Fractions $3\frac{3}{4}$

is as above *Rpt.* 32070

N°. EE.

But to put this Way of calculating the Loſs in a ſtill ſtronger Light, let us ſuppoſe, that a Perſon at *Cadiz* ſhipped for *Vera Cruz* 100 Caſks of Wine, which, with all Charges on board, and the Premium of Aſſurance, amounted to 1000 Dollars; for which Sum he made the Aſſurance on the ſame. The Ship being loſt at *Vera Cruz*, there were no more than 50 of the Casks ſaved, and 20 *per Cent.* was paid for Salvage, either in Kind, or in Money; conſequently there remained without Diſpute no more than 40 Casks for the Owner, and he loſes 60. It ſhould make no Difference for the Aſſurer, whether the 40 Casks are ſold at a high or a low Price, for he ought to pay no more of the Loſs, than what is proportionable to the Value, for which he did receive the Premium; conſequently if each Cask had been valued at 10 Dollars, and fully inſured, doubtleſs no more or leſs than 600 Dollars could have been demanded for the Casks which were loſt. Suppoſing then that they were ſold at great Profit, and that each of the 50 Casks ſaved fetched 100 Dollars, is - - *Dol.* 5000

Deduct 10 Dol. for Salvage and *extra* Charges - - - - 1000

Dol. 4000

Freight from *Cadiz* a 30 Dol. -	1200	
Uſual Charges - -	80	
Commiſſion at 5 *per Cent.* -	200	
Ditto on the Returns for 2520 *Dol.* at 4 *per Cent.* - -	100 $\frac{4}{5}$	
		1580 $\frac{4}{5}$

They would have rendered neat *Dol.* 2419 $\frac{1}{5}$

CASE V. Which, in Caſe they had all arrived ſafe, would have made for the 100 Casks, a 100 Dol. - - - *Dol.* 10000

Freight, a 30 Dol. -	*Dol.* 3000	
Charges - - -	200	
Commiſſion, a 5 *per cent.* - -	500	
Ditto on the Returns for 6300 Dol. a 4 *per Cent.* - -	252	
		3952
	Dol.	6048
Hence deduct the abovementioned		2419 $\frac{1}{5}$
	Dol.	3628 $\frac{4}{5}$

Then as *Dol.* 3628 $\frac{4}{5}$ are reckoned loſt on *Dol.* 6048, in the ſame Proportion are 60 on 100; and notwithſtanding what was ſaved produced much more than the firſt Coſt, ſtill the Aſſurer will be obliged to pay 60 *per Cent.* of the Sum he has underwrote, and for which he received a Premium. For if *Dol.* 3628 $\frac{4}{5}$ are loſt on *Dol.* 6048, then the Proportion of *Dol.* 5048, which the Proprietor had not inſured, is - *Dol.* 3028 $\frac{4}{5}$

And the Inſurer, to make good on 1000, inſured - - 600

Dol. 3628 $\frac{4}{5}$

N°. FF. Or, admitting they were ſold with Loſs, and that the 50 Casks which were ſaved fetched 40 *Dol.* - *Dol.* 2000

Deduct 10 for Salvage - - 400

40 Casks - - - *Dol.* 1600

Freight

CASE V.

Freight a 30 *Dol.* - *Dol.* 1200
Cuſtomary Charges - 32
N.B. Though theſe are always the ſame, whether the Wines are ſold at high or low Prices, yet here is only put a Proportion on the Price of 40 Dol. as it was above, 80 on the Price of 100 Dol. Commiſſion a 5 *per Cent.* - - 80
Ditto on the Returns of 288 *Dol.* a 4 *per Cent.* - - 11 $\frac{52}{100}$
1323 $\frac{52}{100}$
Remains neat *Dol.* 276 $\frac{48}{100}$

100 Casks, if they had arrived in Safety, a 40 Dol. - - - *Dol.* 4000
Freight, a 30 Dol. - *Dol.* 3000
Charges as uſual - - 80
Commiſſion, 5 *per Cent.* - - 200
Ditto on 720 *Dol.* Returns a 4 *per Cent.* 28 $\frac{80}{100}$
3308 $\frac{80}{100}$
Dol. 691 $\frac{20}{100}$
Deduct as above 276 $\frac{48}{100}$
is Loſs - *Dol.* 414 $\frac{72}{100}$

Which Sum divided upon 691 $\frac{20}{100}$, makes again 60 *per Cent.* And accordingly there might be demanded, as above, for the 1000 Dollars, at 60 *per Cent.* - *Dol.* 600
and adding thereunto the Proceed of 40 Casks ſaved - - - 276 $\frac{48}{100}$

the Aſſured would in this Manner receive - - - - *Dol.* 876 $\frac{48}{100}$
inſtead of the abovementioned - 691 $\frac{20}{100}$
and by that Means gain 185 $\frac{28}{100}$ Dollars more in not receiving the 60 Casks, than if they had been delivered in good Condition. But then on the other Hand it is to be conſidered, *Firſt*, N°. GG.
That by Reaſon of theſe 60 Casks being actually wanting, the Aſſured

CASE V. Aſſured was deprived of having the Option to keep them for a better Market. *Secondly*, That there was no Neceſſity for ſelling them immediately at ſuch a great Loſs; and although it is otherwiſe allowed to be a fundamental Maxim, that an Inſurer is, ſtrictly ſpeaking, not to be charged with any Profit or Loſs ariſing from a Market, yet a Diſtinction is to be made when the Goods do not come to Market at all, and in this Inſtance it appears reaſonable that the Aſſured ſhould be entitled to demand from the Aſſurers the Value of theſe 60 Casks, not being wilfully loſt, after the Rate they were inſured at, and for which the Premium was paid, being for the Coſt of 10 *per* Cask, *Dol.* 600; but, whenever Goods arrive damaged, then ſuch Loſs ought not to be adjuſted any otherwiſe than according to the Market Price at the Place they came to; and if ſuch Market Price produces more than is inſured thereupon, or more than the firſt Coſt with the Premium amounts to, then the Proprietor is obliged to contribute his Share thereunto, as being his own Inſurer; in Conſideration whereof the Profit is to remain his: But if any Thing falls ſhort, and the ſame is occaſioned merely by the Decline of the Market, where the Goods actually arrived, then ſuch Deficiency is not to be demanded from the Inſurers; for then we think them to be diſcharged, either by ſatisfying what they fall ſhort at the Market Price, or to reinſtate them with the ſame Quantity of ſuch Kind of Goods; in the ſame Manner as is very wiſely provided in the Policy for Fire of the *London Inſurance*, N°. 1332; " If in caſe the Loſs or Da-
" mage on the ſaid Goods ſhall not be adjuſted and paid as
" aforeſaid, *the Company* ſhall provide and ſupply the Aſſured
" with the like Quantity of Goods of the ſame Sort and Kind,
" and of equal Value and Goodneſs with thoſe burnt or dam-
" nified by Fire." See *Eſſay*, § 29, Page 32.

CASE

CASE VI.

Shewing that the changing any Effects ſhipped at Vera Cruz *into others at the* Havanna, *does not annul the Riſk of the Aſſurance, but that the ſame is not to be charged with any Thing that does not actually proceed from ſuch Effects; as it was decided by Arbitration at* Cadiz *in* 1734.

AMONGST the *Spaniſh* Fleet, which was loſt in the Year 1733, on their Return from *Vera Cruz* and the *Havanna* to *Cadiz*, was a Ship called *Nra. Sra. del Roſario St. Antonio y S. Vincent Ferrer*, Don *Juan Joſeph de Arizon*, Maſter, upon which the Owner Don *J. A.* had made Aſſurance, and in the Policy explained the Risk in the following Manner:

Upon Effects laden on board this Ship, the Hull, Keel, Tackling, and Benefits of it, from the Bay of *Cadiz* to *Vera Cruz*, during its Stay there, and on the Return to the Bay of *Cadiz*, or to the Place where the Regiſter ſhall be at an End, for the Sum of 50000 Dollars. There were ſome Goods ſhipped for the ſaid Don *J. A.* as well at *Vera Cruz*, as at the *Havanna*, which were all fetched wet out of the Water and ſaved; but particularly ſome Tobacco ſhipped at the *Havanna* was quite ſpoiled, but the Damage was not ſo great upon the Goods ſhipped at *Vera Cruz*, they conſiſting chiefly in Cochineal and Indigo. From whence aroſe this Queſtion, Whether the Goods ſhipped at the *Havanna* were included in the ſaid Aſſurance, as that Place was not expreſsly mentioned in the Policy, although it was a well-known Cuſtom, that the Ships on their Return fill up there what they want of their Loading?

This Queſtion, and the Diſpute ariſing from thence, was left to the Arbitration of

Don *L*—— *L*——.
Don *A*—— *M*——-, and
Don *N*—— *M*——-.

On

CASE VI. On Behalf of the Aſſurers it was alledged:

N°. A. 1ſt. That as the Policy expreſſes, That the Riſk ſhall run from *Cadiz* to *Vera Cruz*, during the Stay in that Port, and on the Return to the Bay of *Cadiz*: Conſequently as they had run the Riſk on the Effects, which were ſhipped at *Vera Cruz*, and if the Ship had been loſt between that Place and the *Havanna*, they ſhould have been obliged to pay to the Full, becauſe the Effects ſhipped at *Vera Cruz* amounted to more than was inſured upon them, and that therefore their Risk could only continue on the ſelf ſame Effects, and not upon ſuch as were afterwards ſhipped at the *Havanna*, they being of an inferior Kind, and more liable to Average and periſhing.

2dly. That the Aſſurers ought only to be judged according to the Words of the Policy, which having clearly and diſtinctly determined the Risk to run on Goods from *Vera Cruz*, and where ſuch were actually ſhipped, whereby the Contents and litteral Meaning of the Policy was verified and accompliſhed, but if Don *J. A.* had an Intent and Meaning, that in this Risk ſhould likewiſe be included the Goods laying at the *Havanna*, and which proceeded from a former Voyage, it ſhould have been mentioned in expreſs Words in the Policy.

N°. B. The Aſſureds on their Part repreſented: That all the Effects, ſhipped for this Account ought to be included in this Riſk:

1ſt, Becauſe the Policy ſays: From the Bay of *Cadiz* to *Vera Cruz*, during the Stay there, and the Return to the Bay of *Cadiz*; and it is well known, that a Ship muſt obſerve the Orders of the Admiral, who according to Cuſtom run into the *Havanna*, moreover that Merchantmen uſually fill up their Loading there, when they do not find Goods ſufficient at *Vera Cruz*.

2dly. This being the general Practice, there could be no Neceſſity for particularly mentioning in the Policy, that the Aſſurers were to run the Riſk well upon Goods, which ſhould be ſhipped at the *Havanna* as upon thoſe put on Board at *Vera Cruz*, becauſe both are jointly included in the Riſk from *Vera Cruz* to the Bay of *Cadiz*.

3dly.

3dly. That the greateſt Part of the Tobacco, ſhipped at the *Havanna*, and which the Aſſurers pretend not to be included in this Aſſurance, lay there ready for ſhipping ſo long ago as the Time, when the Policy was underwrote, being the Produce of Money due to him from Don *E. L.* and Don *F. A. B.*, and the Remainder being bought with Gold and Effects brought thither from *Vera Cruz* in his Ship on this ſelf ſame Voyage. CASE VI.

The Arbitrators decided hereupon: That as the Riſk was not fixed in the Policy upon any Effects in particular, and as the Value of what was ſhipped at *Vera Cruz* exceeded the Sum inſured, therefore the Whole ought ſo far to be looked upon as a Concern in common between the Aſſurers and the Aſſured, and that nothing ſhould in particular be appropriated more to one than to the other, and conſequently, that thoſe Effects, which were ſhipped at *Vera Cruz*, and were afterwards changed into other Sorts at the *Havanna*, as is frequently practiſed, cannot afterwards be excluded from ſuch a Community wherein they were before, for that an Aſſurance ought not to hinder the common Courſe of Trade, ſince Don *J. A.* had acted no otherwiſe in this Caſe, than he would have done, if he had not been inſured. The Arbitrators therefore condemned the Aſſurers to bear in common with Don *J. A.* their Proportion of the Damage upon ſo much of the Tobacco, as he ſhould prove to be the actual Produce of the Money or Effects, which were put on Board at, and brought from *Vera Cruz* thither: But as to the Damage on that Part of the Tobacco, which Don *J. A.* had at the *Havanna* before, and did not become his Property by Means of any of the Effects brought from *Vera Cruz*, they cleared the Aſſurers of it, becauſe the Ship had already more than the Value inſured on Board in the Voyage from *Vera Cruz* to the *Havanna*, and if ſhe had happened to have been loſt in that Paſſage the Aſſurers would have been obliged to pay to the Full, although the Tobacco, which *A.* had at the *Havanna*, would then not have been comprehended in ſuch Misfortune. With which Arbitration both Parties appeared to be ſatisfied. N°. C.

CASE VII.

Shewing how the Value of Money and Goods from the Spaniſh Weſt-Indies was calculated at London, *to regulate an entire Loſs, and the Return of the Premium.*

ON the 18 Febr. in the Year 1744. *F. S.* cauſed an Inſurance to be made in *London* by the Brokers *P.* and *G.* for £. 7000. Sterl. on Effects upon Regiſter for Account of *G.* and *J. T.* at *Cadiz*, from *Lima* or any other Port in the South-Seas, to *Cadiz* or any other Port in Europe, where the Regiſter ſhall be at an End. The Riſk was declared to be upon the Ships *la Marquiſe d'Antin*, *Louis Eraſme*, *Notre Dame de la Delivrance* and *la Lys*, or any of them.

The *L. A. C.* underwrote by the Broker *F.* for £. 5250
and ſome private Aſſurers with the Broker *G.* 1750

Three of the above Ships, *viz. La Marquiſe d'Antin*, *Louis Eraſme* and *Notre Dame de la Delivrance* were taken by the
N°. A. Engliſh in their Return home: Upon which *F. S.* claimed the Loſs from the *L. A. C.* and delivered his Account by the Broker *F.* in the following Manner:

Loſt in *La Marquiſe d'Antin*

$\frac{2}{13}$	of 82500 Doll. in Gold and Silver		*Doll.*	12692
$\frac{1}{2}$	- 22610 -	aſſigned on the Freight of the Regiſter		11305
$\frac{1}{8}$	- 50400 -	in Cocoa, a 8 Doll.		6300
			Doll.	30297

Loſt in *Louis Eraſme*

$\frac{2}{13}$	of 36500 Doll. in Gold and Silver regiſtred		5615

Loſt in the *Na Sa de la Delivrance*

$\frac{2}{13}$	of 4000 Doll. in Gold and Silver regiſtred		*Doll.*	615
$\frac{1}{8}$	- 16000 -	aſſigned on the Freight of the Regiſter		2000
				2615

Arrived

Arrived in *La Lys* CASE VII.

$\frac{2}{17}$ of 4000 Doll. in Gold and Silver regiſtred	*Doll.* 615	
$\frac{1}{8}$ - 12000 - aſſigned for the Freight of the Regiſter	1500	
	2115	
	Doll. 40642	
Dollars 40642 a 3*s* 6*d*	£. 7114 : 7	
Premium a 36$\frac{3}{4}$ *per Cent.*	2614	
	£. 9728 : 7	
Deduct for 2115 Dollars, which came ſafe a 3*s* 6*d*	£. 370	
Premium - - -	136	
	506	
	£. 9222 : 7	

If upon £. 9728 : 7 were loſt £. 9222 : 7, how much on £. 98? Anſw. £. 92 : 18

But the *L. A. C.* on the other hand, after having inſpected the original Papers, found on Board of the Prizes, made up their Account in the following Manner:

Loſt in *La Marquiſe d'Antin* N°. B.

$\frac{2}{17}$ of 82500 Doll.	*Doll.* 12692
$\frac{1}{8}$ of 6089 Serons of Cocoa, which were only found regiſtred inſtead of 6300 Serons, and which, according to an authentick Letter from the Perſon, that ſhipped them, coſt but 7 Doll. inſtead of 8 Doll. as was demanded, make for $\frac{1}{8}$ of 42623 Doll.	5327 : 7

N. B. The $\frac{1}{2}$ of 22610 Dollars, aſſigned on the Freight was rejected, becauſe the Freight does not become the Property of a Ship, till ſhe has earned the ſame and the Voyage is finiſhed, neither did it appear by the Regiſter, that any ſuch 22610 Doll.

Case VII. came for Account of the said *T.*, whereas the Policy expresly mentions upon Effects on the Register,

Remain *Doll.* 18019 : 7

Lost in the *Notre Dame &c.*

$\frac{2}{13}$ of 4000 Doll. - - - 615

$\frac{1}{8}$ - 16000 - upon Freight rejected for the above mentioned Reasons.

Lost in the *Louis Erasme*

$\frac{2}{13}$ of 36400 Doll. - - - 5615

Lost *Doll.* 24249 : 7

Arrived by *La Lys*

$\frac{2}{13}$ of 4000 Doll. - - - 615

$\frac{1}{8}$ - 12000 - not allowed as above

Doll. 24864 : 7

From which Sum, in Case the Ships had arrived in Safety, must have been deducted for Freight and Indulto 17 *per Cent.* - - 4227

and then the Assured would have to receive for the Sum insured - - - 20637 : 7

Which being Dollars of $10\frac{5}{8}$ Rp. may be valued in *London* at 39 *d* for 8 Rp., and at that Rate the Intrest for the £. 7000 insured, is only £. 4454 : 1 : 5

and the Premium to be returned for 2545 : 18 : 7

£. 7000

According to this the Loss on the three Ships amounts to - - - *Dol.* 24249 : 7

Deduct 17 *per Cent.* - - 4123 : 4

Dol. 20126 : 3

a $10\frac{5}{8}$ Rp. and 39 *d.* - £. 4343 : 13 : 7

Upon

CASE VII.

Upon £.7000 loſt, £.4343 : 13 : 7 makes
on £.5250 - - - - £.3257 : 15 : 2

Upon £.7000, the Premium to be returned
for £.2545 : 18 : 7, is for £.5250,
£.1909 : 10, a 36¼ *per cent.* - 692 : 3 : 10

And thus the Company would only be obliged to pay

Upon £.5250, at the Rate of £.75 : 4 : 9
Rlrs. *per cent.* - - - £.3949 : 19

being for £.3257 : 15 : 2 Loſs
1909 : 10 Premium returned
82 : 13 come ſafe.

£.5249 : 18 : 2.

According to this Calculation the Aſſured (as is obſerved in *Eſſay*, § 40. and in *Caſe* IV. N°. B.) would have received exactly the ſame for his Silver as if it had ſafely arrived; and though the Broker *F.* owned the Equity thereof, yet he was of Opinion the Affair ought to be left to Reference, ſince it was in general a Cuſtom in *London* to add the Premium to the Coſt, notwithſtanding it did not ſeem to appear juſt in Regard to the Returns of Silver.

But as the *L. A. C.* inſiſted on their Account as above, the Broker *G.* was then employed to endeavour at coming firſt to an Adjuſtment with the private Aſſurers; in doing whereof he adopted the Calculation of the ſaid Company exactly, as juſt in Regard to the Silver; but as to what related to the Cocoa, he was of Opinion, that ſince the ſame was worth much more in *Europe* than it coſt in the *Weſt-Indies*, it might therefore be allowed to add the Premium to the Coſt, and accordingly he framed the Account as follows: N°. C.

In

CASE VII.

In *La Marquise de Antin.*

$\frac{1}{8}$ of 6089 Casq. Cocoa, a 8 Dol. (see the Remarks above in the Company's Calculation) being 48712 Dol. whereof 6089 Dol. a 4 : 4 make - £. 1319 : 5 : 8
Premium of £. 2190, a 36 $\frac{3}{4}$ *per cent.* 804 : 16 : 6
Commission at 1 *per cent.* - - 21 : 4 : 10
$\frac{2}{13}$ of 82500 Dollars - *Dol.* 12692

In the *Louis Erasme.*

$\frac{2}{13}$ of 36500 - - 5615

In *Nra. Sra. de la Deliverance.*

$\frac{2}{13}$ of 4000 Dol. - - 615
$\frac{1}{8}$ of 16000 (see the Remark above) 2000

In *La Lys.*

$\frac{2}{13}$ of 4000 - - - 615
$\frac{1}{8}$ of 12000 (see what is remarked above) 1500

Dol. 23037
Deduct 17 *per cent.* - 3916

Dol. 19121
a 10 $\frac{5}{8}$ Rpta, and 39 Pence - 4126 : 14

£. 6272 : 1

Arrived by *La Lys* - *Dol.* 2115
Deduct 17 *per cent.* - - 360

Dol. 1755
a 10 $\frac{5}{8}$ Rpta. and 39 Pence - 378 : 15

upon £. 7000 - - £. 5893 : 6

is for a hundred Pounds - - 84 : 3 : 6

£. 5893 : 6 a 98 *per cent.* £. 6011 : 3 : 4
and the Premium to be returned for - - 988 : 16 : 8

a 34

CASE VII.

a 34 ½ *per cent.*	£. 341 : 3	
which £. 341 : 3 divided on £. 7000, is for 100 - -		4 : 17 : 6
makes for each £. 100 which the ſaid private Aſſurers did pay.	£.	89 : 1

According to this Example, *F. S.* demanded to ſettle the Loſs with the *L. A. C.* likewiſe: But it remained evident enough that it was erroneous in the Calculation of the Cocoa, and that it was a Miſtake to reduce the Value of Goods from the *Spaniſh Weſt-Indies* into *European* Money, in any other Manner than at the Rate of what the Silver itſelf coming from thence actually produced, or could have produced. For as there is no Courſe of Exchange from the *Spaniſh Weſt-Indies*, by which 4 *s.* : 4 *d.* can be made for a Dollar, without running the Risk of the Sea, it follows from thence, that ſuch Reduction cannot be made otherwiſe than by deducting the Charges of bringing it from thence to *Europe*, being the Freight, Indulto, and Premium of Aſſurance [*a*]. For if the Addition of 36 ¾ *per Cent.* for Premium of Aſſurance on the Cocoa was to be allowed of, it would be equal to ſuppoſing that ſuch a Dollar could produce 7 ½ Shill. Beſides it is manifeſt that the Aſſurers have nothing to do with Alterations in the Prices of Goods, or whether they yield Profit or Loſs; and that frequently Goods from the *Spaniſh Weſt-Indies* turn to worſe Account than Gold or Silver, and that the Aſſured, if the Addition of ſuch an high Premium as 36 ¾ *per cent.* was to be admitted, might ſometimes gain half a Capital more by the Ship's being loſt, than if ſhe came home ſafe, and he had received his Returns in Silver or Gold by the ſame. N°. D.

F. S. intimated that if this Matter came to a Law-Suit, he ſhould demand the Payment of the full Loſs according to the following Account: N°. E.

For Loſs as ſettled by the *London Aſſurance* Comp. - -	£.	3257 : 17 : 7
For Premium of 5250 *l.* a 36 ¾ *per cent.*		1929 : 7 : 6
For Commiſſion and Policy -		29 : 9 : 6
	£.	5216 : 14 : 7

[*a*] See *Eſſay*, § 40.

And

Case VII. And as for the £. 5250, he ſhould receive
at the Rate of 98 *per cent.* only - 5115
that therefore he had, with the Addition of the Premium, an Intereſt ſufficient for the whole Sum

But he making afterwards ſome further Conceſſions on his Part, and the Company being unwilling to engage in Diſputes at Law, thought it preferable to ſplit the Difference with him between the Account made up by themſelves, and that ſettled with the private Aſſurers as abovementioned.

Case VIII.

CASE VIII.

Regulation of the groſs and general Average, upon the Ship le Mentor de Bordeaux, *Capt.* Nicolas Elie Mée, *occaſioned by the bad Weather ſhe met with on her Voyage from* Bordeaux *to* Martinico.

AFTER ſhe ſailed from thence on the 17th of *Sept.* 1744, the Wind on the 29th of the ſame Month carried away the Sprit Sail Yard; and the Sail, which was quite new, was entirely blown to Pieces; and ſtove in Part of the Forecaſtle, carried away all the Bulk-Heads, and broke the Studding Sail-Booms, and the Main Stay.

On the 2d of *October* he met with an *Engliſh* Privateer, and was engaged with him for two or three Hours. On the 6th ditto the Wind carried away the Foremaſt, and was ſo violent, that the Ship could no longer be ſteered; he was therefore obliged to cut away the Mizen Maſt, which fell into the Sea, with all its Appurtenances, ſuch as Sails, Yards, Rigging and Blocks.

On the ſame Day the Wind alſo carried the Top Sprit Sail quite away, as likewiſe the Yard and Fore-Sail, and the Ship was almoſt under Water, which forced the Captain to have the Shrouds of the Main Maſt cut away, which broke into ſeveral Pieces below the round Top, whereby at the ſame Time all the Sails, Top-Maſt, Yards, Rigging, Blocks, and every Thing elſe belonging to it were loſt. He then ordered twelve Guns, four Pounders, with their Carriages to be flung overboard; and

and finding the Ship not to be in a Condition to purſue the Voyage, he put into *Liſbon*, as more fully appears from the Depoſitions taken in due Form the 6th of *October*, on board of the Ship, and afterwards on the 19th of the ſame Month, before the *French* Conſul at *Liſbon*. CASE VIII.

Specification of the groſs Average.

Extract of the Account ſent by Meſſrs. B---. P---. C---, *and Comp. at* Liſbon, *and approved by the Maſter, reduced into* French *Money, as follows:*

New MASTS. N°. A.

For a Mizen Maſt, in the Room of that which was cut away, and flung overboard - - -	*Livres*	400
For a Main Maſt, as before -		600
For a Round Top, or Scuttle for ditto		87:10
For the Truſsle Trees to the Main-Maſt		69
For ditto to the Main Top-maſt -		12:10
For the Top-Gallant-Mizen-Maſt		50
For the Yard to the Mizen-Maſt -		75
For the Top-Gallant Yard -		75
For the flying Top-Gallant-Yard -		45
For the Mizen-Maſt-Scuttle -		50
For two Truſsle-Trees - -		50
For the Main-Top-Maſt - -		180
For the Main and Main-Top-Yard		240
For Buttons to the Yards, a Main-Top-Gallant-Maſt, and Flag-Staff, -		80
For making the Yards and Maſts -		197
For Spars to the Main-Scuttle, and a Main-Top-Maſt - -		60
For ditto to the Mizen-Maſt -		50
For Pullies, Blocks, and Ramſblocks		227
To the Smith, for putting the Iron-Work on the Main-Top-Gallant-Maſts, and the other Tackling		320
For the Clamps or Knees to the Main-Maſt - - -		15
For Nails of different Sizes -		47:10
	Liv.	2930:10

CASE VIII.

New RIGGING.

N°. B.

For a Shroud, weighing 800 lb. calculated in *French* Money -	*Liv.* 480	
For a Main-Stay, and a Scuttle-Stay, weighing 300 lb. - -	180	
For the running Shrouds of the Main-Maſt and Fore-Maſt, weighing 2400 lb.	1440	
For the Shroud and Stay of the Mizen-Maſt, weighing 400 lb. -	240	
For the Scuttle and running Shroud, weighing 500 lb. -	300	
		2640

New SAILS.

For 13 Pieces Sail-Cloth for the two lower Sails - -	731 : 5	
For 13 Pieces of an inferior Sort for the Top-Maſt and Top-ſprit-Sails For 6 $\frac{2}{3}$ Pieces for the Mizen-Top, and Flying Top-gallant Sails 19 $\frac{2}{3}$ Pieces together	885	
For 7 ditto, for the Stay and Sprit-Sails	288 : 15	
To the Sail-maker, for Workmanſhip	602 : 8	
For carrying the Cloth to the Sail-maker, and the Sails on board of the Ship	3 : 12	
	Liv. 2511	

N°. C.

From which to be deducted for the Top-ſprit, the flying Top-gallant, the Fore and Fore-top-ſails, which muſt come into the particular Average, and were valued by the Sail-maker *Choitard* after the Rate of Liv. 2511, which the whole coſt, at - -	800	
		1711
	Liv. 7281 : 10	

New

CASE VIII.

New Guns, Carriages, Gunpowder, in the Room of what was expended in the Engagement, Bullets, &c.

N°. D.

For 12 Guns in the Place of thoſe, which were thrown into the Sea during the Storm - - -	*Liv.*	1260	
For 24 Days Labour to mend the Carriages - -		72	
For Axle-Trees to them -		9	
For three Inſtruments to ſweep and clean them - - -		7:10	
For Nails for the Carriages -		1:17	
To the Porters for carrying the Guns to the Water-ſide - - -		10	
To the Waterman for carrying them aboard - -		20	
For eight round Copper-Plates -		14	
	Liv.	1394: 7	
For 100 lb. Gunpowder	*Liv.* 102:11		
For 25 round Bullets -	12:10		
For 25 Cannon-Ball -	40: 2		
		155: 3	
			1549:10
For 3 Barrels of Oil, which were kept in Flaſks on board of the Ship, and were broke by the falling of the Maſts			30
For Duties of the Maſts, Yards, Sails, Guns, Rigging, *&c.* - -			683
		Liv.	9544
Commiſſion of Meſſrs. *B. P. C.* and C°. at *Liſbon*, who furniſhed the Money for the Uſe of the Ship a 2 *per cent.*			190:17:6
For drawing up this Regulation -			48
Total of the groſs Average		*Liv.*	9782:17:6

CASE VIII. N°. E. Which Average is to be borne by the several principal Sums following, being the Goods shipped as well for Account of the Owners as on Freight, half the Value of the Ship, and half the Freight, *viz.*

List of the Cargo for Account of Messrs. C—— *and* D——, *Owners of the Cargo.*

22½ Tons red Wine	*Liv.* 5266 : 5	
61 Ditto red Wine from *Cahors*	9328 : 0 : 11	
9½ Ditto white Wine -	1590 : 18 : 6	
600 Barrels Flower 6 Hogsheads Oatmeal	12419 : 7 : 3	
538 Casks salted Beef -	16578 : 5 : 9	
85 Firkins Butter, 59 Half Firkins ditto	2110 : 6 : 1	
100 Cases Mould Candles -	1474 : 19	
25 Firkins Tallow -	578 : 8 : 10	
29 Barrels pickled Pork and Bacon	365 : 18 : 9	
67 Anchors Brandy -	469 : 5	
2 Hogsheads Hams -	851 :	
161 Last Staves - -	471 : 15	
5 Casks Nails - -	650 : 10 : 9	
30 Hampers with Liquors -	183 :	
	Liv. 52338 : 0 : 10	

For Mr. G——.

8 Tons Wine	*Liv.* 1200	
48 Barrels Flower	862 : 12 : 10	
		2062 : 12 : 10
	Liv. 54400 : 13 : 8	

For

CASE VIII.

For the Freight, which we value in the Whole to be 260 Tons, at Liv. 200 amounting to Ls. 52000, half thereof according to the Ordinance of 1681 being - - *Liv.* 26000

N°. F.

The Ship was inſured at *London* in the Month of Auguſt 1744 for £. 2000 *Sterl.*, at which Sum ſhe was valued in the Policy, and makes at the Exchange of *d.* 31½ *Sterl. per* Crown Liv. 44307 French Money, and which we eſtimate in the Condition ſhe was after the Average, at Liv. 30000, the half is - - 15000

41000

The whole Capital *Liv.* 95400 : 13 : 8

Upon which Capital of Liv. 95300 : 13 : 8, the Average amounting to Liv. 9782 : 17 : 6, as above ſpecified, being divided, comes to 10 Livres 5 *Sols* and one Denier *per Cent.* which muſt be born by the Parties hereafter named according to the following Account and Repartition, *viz.*

By the Cargo for

L. 52338 : : 10 a Liv. 10 : 5 : 1 *per Cent.* *Liv.* 5366 : 16 : 6

By Mr. *G.* who ſhipped on Freight for

2062 : 12 : 10 - - - - 211 : 10 : 9

By the half of the *Ship* and of the Fright

41000 - - - - 4204 : 10 : 3

L. 95400 : 13 : 8 *Liv.* 9782 : 17 : 6

We the underwritten Arbitrators choſen, approved and conſented to by the Parties the 27 April laſt, do hereby certify, that we have made this Adjuſtment from the Documents produced to us as aforeſaid. At *Bordeaux* the 4 June 1745.

(was ſigned)

VIGNES. BROUET.

Inſurer of the Cargo.

Regula-

CASE VIII. N°. G. *Regulation of the ordinary and particular Averages, which happened to the Ship* Mentor *of* Bordeaux, *Capt.* Niclas Elié Mée, *by violent Storms and bad Weather, which ſhe met with on her Voyage from this Port to the Iſland of* Martinico, *as appears by the verbal Evidence and Depoſitions referred to in the Settlement of the groſs Average*, viz.

For the Share and Proportion, which the Ship is to bear of the groſs Average according to the Adjuſtment above mentioned	*Ls.* 4204 : 10 : 3	
For the Clamps and Supports of the Fore-Caſtle, before the ſame were waſhed away by the Waves - - -	45	
For ditto . . . . on Board -	24	
For four Ribbs and Trucks for the Yards	13	
For the Rails of the Quarter Deck	30	
For the Crucker - -	72	
For the Windows in the Cabin -	12	
For a Table . . . . in ditto	40	
For the Door to the ſame -	18	
For a Pitch-Kettle - -	36	
For 15 Days Work, by the Carpenters	45	
For 25 Quintals Biſcuit, which were loſt	562	
For 150 lb. dryed Fiſh, ſpoiled by Sea-Water	36	
For 150 lb. Matches for Guns, likewiſe quite ſpoiled - - -	51	
For a Bell of 55 lb. Weight, waſhed away by the Waves - -	103 : 2	
For three Hen-Coops ſtove by the Sea	120	
For the Sprit, Top-Sprit and Mizen-Sails, which as well as the Fore-Sail, were carried away by the Vehemence of the Storm, and have been valued by Mr. *Choitard*, the Sail-maker, in Proportion to the Coſt of all the Sails being 2511 at -	800	
For 400 lb. Oakam to caulk the Ship	70	
For 500 Billets to ſmoke the Ship *Ls.* 92 : 10		
For carrying them to the Water-ſide - - 3 : 15	96 : 5	
For 40 lb. of Tallow - -	15	

For

For 58 ½ Days caulking	182 : 5	
For carrying the People a-board	5 : 10	187 : 15
Paid to the Interpreter -		40
To Mr. *Ferran*, of the Consuls Office, for the Depositions and Copies -		54
To Mr. *Amelin*, Vice Consul, for his Dues		67 : 15
To Mr. *L'Athicylerie*, Vice Consul at *Behlem*		131 : 7 : 6
To the Custom House-Officers, during the Time, that the Ship lay at *Behlem*, where she was detained by the Officers of Health		170
For Duties for the Sails and for the other Articles above mentioned -		337 : 15
Expences of the Captain and his Officers during the Time the Ship was refitting		150
	Liv.	3326 : 19 : 6
For Commission of Mff. *B.* . . , *P.* . . *C.* . . and Comp. at *Lisbon*, who furnished the Captain with the Money required for his Ship's Use - - -		66 : 10 : 6
For settling this Account - -		18
		3411 : 10
Total Average on the Ship	*Liv.*	7616 : : 3

CAPITAL *which is to bear this Average.*

The Ship, which was insured at *London* in the Month of August 1744, and was valued in the Policy at £. 2000 Sterl. which at the Rate of *d.* 32 ½ Sterl. *per* Crown, as the Course of Exchange then was in *London*, make in French Money N°. H.

Liv. 44307

Upon which Sum of Liv. 44307 Capital, the Average amounting as above to Liv. 7616 : : 3, being divided, comes to 17 Livres 3 Sols 9 Deniers *per Cent.*, which the Gentlemen Assurers at *London*, are to pay according to the Policy of the Month of August 1744 upon the Ship *Mentor* of *Bordeaux* to Mff. *C.* . . and *D.* . . , who fitted this Ship out, each in Proportion to the Sum he has underwrote in Consideration of the Premium they did receive.

We

CASE VIII. We the underwritten Arbitrators certify, that we have made the above Adjuſtment. *Bordeaux* the 4 June 1745.

(ſigned)

VIGNES. BROUET.

An Aſſurer on the ſaid Cargo.

Regulation of the ordinary and particular Averages, that happened to the Cargo of the Ship Mentor *of* Bordeaux, *Capt.* Nicolas Elié Mée, *on her Voyage from this Port to the Iſland of* Martinico *according to the verbal Declarations and Depoſitions referred to in the Settlement of the groſs Average*, viz.

For the Share and Proportion, which the Cargo is to bear in the groſs Average, according to the Adjuſtment thereof here above mentioned . . .	*Liv.* 5366 : 16 : 6
Gratuity for ſettling this Account	6
The whole Average	*Liv.* 5372 : 16 : 6

CAPITAL *which is to bear this Average.*

The whole Cargo amounts as *per* Invoyce of the 1 September 1744 to - *Liv.* 52338

The Premium of Aſſurance upon this Sum is as follows:

Liv. 15100	inſured at *Bordeaux* a 25 *per Cent.* -	*Liv.* 3775	
27500	inſured at *Bayonne* a 26½ *per Cent.* -	7218	
9738	we reckon on the Footing as Liv. 10000 were inſured at *Paris* a 25 *per Cent.*	2434 : 10	
			13427 : 10
Liv. 52338 [a]	Total Capital		*Liv.* 65765 : 10

N°. I.

[a] By this Account it is evident, That in *France* they were at that Time either deficient or remiſs in the true Method of calculating the Premiums of Inſurance: For, in order effectually to cover Liv. 52338 their Intereſt, they ſhould have added thereto Liv. 17446 for the Premium, at 25 *per Cent.* (See *Eſſay* § 37.)

The

The above Average of Liv. 5372 : 16 : 6 being divided upon the ſaid Capital of Liv. 65765 : 10, the ſame amounts to 8 Livres 3 Sols and 5 Deniers *per Cent.*, which the Gentlemen Inſurers on the ſeveral Policies upon the Cargo of the Ship *Mentor* of *Bordeaux* have to pay to Mſſ. *C.* and *D.* in Proportion to the Sum, which each of them has underwrote, in Conſideration of the Premium they did receive. CASE VIII.

We the underwritten Arbitrators certify, that we have ſettled the Account as above mentioned.

(ſigned)

VIGNES. BROUET.

An Aſſurer on the ſaid Cargo.

REMARKS.

Beſides the Payment of the Sum inſured a groſs and particular Average was likewiſe demanded and the Valuation of the Goods made at *Bordeaux* at Prime Coſt. N°. K.

The Repartition of the groſs Average in this Regulation could not be made according to the Direction of the Ordinance of *Louis* the *XIV.* in 1681. in the 3 *Book*, under the 8 *Tit.* 6 *Art. fol.* 711., *ſuivant le Prix courant dans le Lieu de la Decharge du Batiment*, (at the current Price at the Place of the Ship's Diſcharge) becauſe the Ship never arrived at the Port, to which ſhe was bound to unload, for after ſhe was repaired at *Liſbon*, ſhe was taken by an Engliſh Man of War in her Voyage to *Martinico*, and therefore muſt of Neceſſity be calculated on the Coſt of the Cargo.

According to the Account of the Owner, to whom at the ſame Time the greateſt Part of the Cargo did belong; This Accident was attended with this particular Circumſtance, that at that Juncture no Money was to be found at *Liſbon* on Bottomry, ſince otherwiſe it is uſual on ſuch Occaſions, to take the Money required for the Repairs upon Bottomry at the Place, where the Ship goes to refit, and then the Lender of ſuch Money on Bottomry runs the Riſk thereof himſelf; And as the Premium of Aſſurance was exceſſive high there, and yet the Factors had no Security for their Diſburſements without an Aſſurance, they therefore judged it moſt adviſeable, to draw for the Expences

CASE VIII. of the Repairs upon the Owners at *Bordeaux*, and to leave it to him to ſettle with the Parties concerned or with the Inſurers.

N°. M. In what Manner the Owner explained himſelf, concerning this Matter towards his Inſurers at *Bordeaux* and *Bayonne*, who had underwrote on the Cargo, is not known, nor how much he received of them; But as to the £. 2000 *Sterl.* inſured at *London* upon the Ship, we know that he did indeed give a general Notice to an Aſſurance Company of the Damage that had happened, but had no Note made either in the Policy, or in the Company's Books, of what he would have underſtood by it.

N°. N. But afterwards it appeared, that this Money, which was diſburſed for the Repairs had not been inſured by any Body, and the ſaid Owner ſeemed to have been of Opinion, that the Inſurers ought to pay thoſe Expences over and above the Sums they had underwrote, in Caſe the Ship was loſt after her being repaired, ſince he demanded . . *per Cent.* for groſs Average, according to the above Regulation, beſides the 98 *per Cent.* which they were obliged to pay.

N°. O. For ſome particular Conſiderations, this Affair was left to Arbitration, and thereby determined, that £. 2280 *Sterl.* ſhould be paid for the £. 2000 *Sterl.* inſured at *London*, and the Company complied with this Award. However, that no irregular Conſequences may from hence, hereafter be drawn by way of Precedent, we muſt obſerve, that, according to our Opinion, and to ſtrict Juſtice, the Laws and Cuſtoms were not in all Reſpects ſufficiently regarded in this Regulation drawn up at *Bordeaux*, and approved by the Arbitrators at *London* as above mentioned. For

N°. P. *Firſt*, Notwithſtanding the Ship was ſix Years old, and in Courſe ſeveral of the Materials, which were replaced by new ones, muſt have been already greatly worn, yet no Allowance was made for the ſame to the Aſſurers in the Articles of Liv. 2930: 2640 and 1711, tho' it be every where cuſtomary to make an Abatement for Wear and Tear. Whereon, ſee the Opinions more at large in the *Caſe XII. C.*

Secondly,

CASE VIII.

Secondly, The Inſurers are charged with N°. Q.

Liv. 290 for Materials broke and carried away by the Storm,
649 for Bread and Fiſh ſpoiled,
1023 for other Materials, that were broke.

Wherein no Regard ſeems to have been had to the above mentioned *Ordin.* in the 3 *Book*, under the 6 *Tit.* and 29 *Art. f.* 685. *Les Dechets, Diminutions & Pertes, qui arrivent par le Vice propre de la Choſe, ne tomberont point ſur les Aſſureurs* (the Waſte, Decay or Loſſes, that may happen through the natural Tendency in the Quality of the Thing itſelf, ſhall not fall upon the Inſurers.)

Thirdly, The following Sums, *viz.* N°. R.

Liv.	40	to the Interpreter,
	65 : 15	to the Vice Conſul,
	131 : 7 : 6	to the Conſul,
	130	to the Cuſtom-Houſe Officers,
	150	to the King's Officers,

which are here charged upon the Ship alone, ought, as is otherwiſe cuſtomary, either to come into the groſs Average, or elſe to be reckoned as common Average $\frac{2}{3}$ upon the Cargo, and $\frac{1}{3}$ upon the Ship.

Fourthly, It is judged, as the Aſſurance at *London* was made on the Ship only, and not on the Freight, and as each of them contribute for half their Value only, therefore the Inſurers on the Ship ought by no means to bear the full Share of the Freight, for altho' the Ship was inſured at *£.* 2000 *Sterl.* yet Ship and Freight together contribute here for no more than Liv. 41000, as is ſhewn more at large in the next enſuing *Caſe*.

As it was not explained, whether the Inſured could have taken a Premium of Bottomry, or not, if the Ship had arrived ſafe at *Martinico*, there remained a Doubt, and the Inſurers, as well as the Inſured are eſteemed equally blameable, if they do not explain themſelves more fully, when Circumſtances of this Kind are known, and it ſeems reaſonable, that the Party, who diſburſes the Money ſhould naturally take care ſo to do for his own Security, conſequently, when ſuch Diſburſement is made in an Affair, wherein ſeveral are concerned, and that it cannot im-

CASE VIII. mediately be determined, how much will fall to the Share of each of them, it is moſt prudent to make a real Inſurance, in order to obviate every Difficulty: For then no Diſpute can ariſe againſt the Charge of the Premium with the Average, ſince his Inſurers will then know, that this Riſk is otherwiſe inſured: It is, however, not intended hereby abſolutely to determine in Favour of the Inſurers, that they are no ways concerned in ſuch Kind of Riſk, when the giving Notice thereof happens to be omitted without any ſiniſter Deſign, or for Want of proper Time, but only to remark, that ſince the above ſaid Arbitrators admitted Articles apparently wrong in ſome of the leſſer Points, their Deciſion therefore upon the main Queſtion: Whether this Average was to be paid over and above the *Sum* inſured, which was to be at 98 *per Cent.* cannot be deemed deciſive without more concluſive Arguments.

N°. S. Thoſe, who were nominated to enquire into and to ſettle this Loſs on behalf of the Company, objected to this Demand. For as the Inſured had neither declared in the Policy, nor proved by any other Circumſtance, that the original Inſurers were not to be charged with any Premium of Bottomry for this new Diſburſement after the Voyage was finiſhed, he therefore had no ſufficient Reaſon to inſiſt on the Company's paying this Average over and above the *Sum* inſured; ſince what he intimated to them in general of this Affair, might be taken as well on one *Side* of the Queſtion as on the other.

Beſides it might be ſuſpected, that the Inſured had deſignedly poſtponed this Affair, in order to make a more favourable Calculation for himſelf, when the Voyage was ended.

If on the contrary the Ship had arrived at *Martinico*, then the Average muſt have been ſettled according to the French Ordinance, that is to ſay, according to the Value of the Goods there, which amounts uſually to double what they are worth at *Bordeaux*, by which means ſo much the leſs would have fallen to the Share of the Company, as Inſurers on the Ship; which evinces at the ſame Time the Neceſſity, that the Aſſured ought before-hand and in due Time to make his Declaration, when he would have it underſtood otherwiſe.

It

CASE VIII.

It is from thence however not to be concluded, that ſuch of the Inſurers in *London* are right in their Opinion, who ſuppoſe, that their Conſent is abſolutely required, when more than 98 *per cent.* is to be paid for 100 *l.* that is underwrote; but it is taken for granted, when the Inſured gives Notice in Writing to the Inſurer, or can prove in any other Shape, that he did not intend to add any Premium of Bottomry or Inſurance, when he came to demand Payment of the Average, that then thoſe Aſſurers are liable to bear the Risk in Proportion to the Charges over and above the Sums underwrote at 98 *per cent.* N°. T.

Suppoſing a Ship that is put up at *London* for *Liſbon*, and Inſurance made on the ſame at and from *London*, for £. 1000 at 98 *per cent.* ſhould by the floating of Ice, or other Accident, be ſo much damaged, that the Repairs may amount to £. 100, which the Inſurer paid before her Departure. Now the Queſtion is: If that Ship ſhould afterwards happen to be loſt on her Voyage to *Lisbon*, whether the Aſſurer is to pay only the remaining £. 880, or the full 980? The Anſwer is: If the Inſured has charged the Aſſurer in the Account of the £. 100 Average, with a proportionable Premium, then he is only liable to the Payment of £. 880: But otherwiſe he is anſwerable as well for the Repairs of the Ship, as for her Safety till ſhe arrives at *Lisbon* in a Condition to be worth the 980 *l.* Conſequently he ought to pay that full Sum if ſhe be loſt on her ſaid Voyage to *Lisbon*. N°. U.

There are likewiſe ſome Examples, wherein Cuſtom and Precedents alone can decide. As for Inſtance: In the late Caſe of a *Daniſh* Ship the *Little Benjamin*, Capt. *Carſten Neuſchilling*, which, on her Voyage from *Hamburgh* for *Cadiz*, was ſtopped at *Dover*, and after being cleared with conſiderable Expence, was loſt not far from *Dover*, before any Settlement or Repartition of the Charges was made at *Hamburgh*, neither had any Declaration been made to the Inſurers, that no Premium of Inſurance was intended to be charged to them. Yet as it appeared from all former Accounts ſent by the Merchants at *Hamburgh* in relation to other Ships detained in *England*, that neither their Agents, who diſburſed the Money, nor thoſe immediately concerned, did ever charge the Inſurers here with any Premium of In- N°. W.

CASE VIII. Insurance; this therefore was alone sufficient to condemn the Insurers likewise in this Case to pay the Charges of reclaiming in Proportion to their Shares, besides the full Loss at 98 *per cent.* due on the Ship's being cast away; and it would have been an Injustice done to the Insured, had it not been so settled.

CASE IX.

CASE IX.

Shewing the Regulation of a gross Average, which happened to the Ship la Couronne de Rochelle, Capt. Auriaud, *and to the Goods shipped on board her, on her Voyage from* St. Domingo *to* Rochelle, *where she arrived the* 19*th of* July, 1747.

IT appears from the Declaration made according to Custom by the Captain of the Ship *la Couronne* on the 22d of *July* before the Admiralty of this City, and confirmed by his Ship's Company, that after the Ship sailed with the Fleet from *St. Domingo*, and had been 12 or 13 Days on the Voyage, they discovered on the 26th of *May*, such a considerable Leak in her, that the Water increased 2 or 3 Feet in an Hour, which so tired the People on board, that they could no longer keep the Ship clear by pumping. That, when the Captain saw the Risk of sinking before his Eyes, he made the usual Signal of Distress, and towards Evening came up with the Commodore, and acquainted him with his Condition, who ordered that he, the Captain, should keep near unto him for that Night. That, though the Water continued still increasing the next Day, and the People were no longer able to stand to the Pumps, yet he was loth to put out his Boat, in order to get Assistance, for Fear the Crew should leave the Ship, he therefore resolved to bear up to the Ship *Theodore*, in which the Owners of his own Ship were likewise concerned. The Commodore having then brought to, at the Request of both these Captains, and Orders being given, the Boats from several Ships came along-Side of his Vessel, in order to lighten her, and to make Room to search for the Leak, and to stop the same. That these Boats fetched out of his Ship Sixty-eight Casks of Indigo, consisting of Wholes, Halves,

Halves, Thirds, and Quarters; moreover, one Hogſhead white Sugar, all of different Marks and Numbers, being Part of thoſe which were ſhipped on Freight for others, whereof he took as exact a Memorandum as the prodigious Hurry would permit, but cannot pretend to aver, that no Miſtakes are to be found in it. According to this Liſt, out of the Sixty-eight Casks of Indigo, and one Hogſhead Sugar, nineteen whole, four half Casks of Indigo, and the Hogſhead of Sugar went on board of the Ship *l'Eſperance*, Capt. *la Porte*; five whole, two half, and two Quarter Casks Indigo on board of the *Atlas*, Capt. *Robert*; one and twenty whole, ſix half, and five Quarters, on board of the Ship *le Theodore*, Capt. *Theodore Bonfils*; and two whole, with five halves, on board of the Ship *le Solide*, Capt. *Comte:* That after a diligent Search, he found the Leak that Night in the Stern of the Ship, and ſtopped it as well as he could, *&c.* CASE IX.

From the Enquiry that was made at the unloading of this and of two of the other Ships, which took ſome of the Indigo on board, it was reaſonable to conclude, that 20 Whole, 5 Half, 1 Third, 4 Quarter Casks, and 1 Anchor of Indigo, as alſo one Hogſhead white Sugar, were put on board *l'Eſperance* and the *Atlas*, which were both taken by the *Engliſh*; and all this together makes the Object of this Average.

Groſs or general Average. N°. A.

20 whole Casks, 5 half, 1 third, 4 quarter, and 1 Anchor Indigo were taken by the *Engliſh*; which Indigo, according to the Invoices produced, did altogether weigh at *St. Domingo* - nett 20577 *lb.*
Deduct 10 *per Cent.* for Waſte as uſual - 2058

18519 *lb.* at
Liv. 3 : 19 : 3 *per lb.* free of all Charges, *Liv.* 73381 : 10 : 9.

1 Hogſhead

CASE IX. 1 Hogſhead clay'd Sugar weighed
groſs 1090 *lb.*
Tare 12 *per cent.* 131

959 *lb.* a 25 Liv. *per* 100 lb. free as above - 239 : 15

Freight of the Indigo and Sugar put on board of the *Atlas* and *l'Eſperance*, which two Ships were taken by the *Engliſh*; but the Freight thereof belongs to the Ship *la Couronne*, as ſhe unloaded thoſe Goods for the general Benefit - - 7647 : 7

For Freight paid to the Ships *le Theodore* and *le Jupiter*, for the Parcels of Indigo which they delivered in *France* 5872 : 10 : 8

Expences of this Adjuſtment - 50

Total of this Average Liv. 87191 : 3 : 5

To which Average the ſundry Effects are to contribute in the following Proportion:

The Cargo conſiſted of the following Goods;

282 Bques. 8 Qts. Sugar, weighing all together nett 198949, at Liv. 13 : 10 clear of all Charges - - Liv. 26858 : 2 : 3

169 Bques. 13 Qts. clay'd Sugar, weight nett altogether 156606 lb. at Liv. 25 the 100 lb. clear as above - 39151 : 10

37 Bds. 21 Bques. 5 Tierçons, 16 Qts. 3 Ancres of Indigo, which came in this Ship, and weighed nett 38037 lb. a Liv. 3 : 19 : 3 *per* lb. clear of all Charges - - 150721 : 12 : 3

26 Bds. 6 Bques. 2 Tçons. 5 Qts. of Indigo, which came in the *Jupiter*, and *Theodore*, weighing nett 22022 lb. a Liv. 3 : 19 : 3 clear of all Charges 87262 : 3 : 6

20 Bds. 5 Bques. 1 Trçon. 5 Qts. 1 Ancre of Indigo, which were put on

board

CASE IX.

board of the *Atlas* and *l'Eſperance*, amounting by the Account here above ſpecified, to - -	73381 : 10 : 9	
1 Barrel white clay'd Sugar, put on board of the *Eſperance*, amounts by the ſaid Account to - -	239 : 15	
	377614 : 13 : 9	
Half the Value of the Ship, appraiſed according to the Condition ſhe was in at the Time of this Average	14000	
According to the Account delivered of the Freight (which is found juſt and true) the Whole amounts to Liv. 121473 : 3, including the Freight of the Indigo and Sugar, that were taken, and the Average for their half; of which the half is - -	60736 : 11 : 6	N°. B.
	Liv. 452351 : 5 : 3	

The general Average, amounting as beforementioned to 87191 Livres, 3 Sols, 5 Deniers, being divided upon the above Capital of 452351 Livres, 5 Sols, and 3 Deniers, makes the Loſs 19 Livres, 5 Sols, and 6 Deniers for every 100 Livres, and the Goods that were on board retain by that Means their abovementioned Value, Liv. 19 : 5 : 6 N°. C.

The Ship contributes thereunto	Liv. 2698 : 10	
The Freight - -	11707 : 1 : 3	
The Cargo - -	72785 : 5 : 9	
	Liv. 87190 : 17	

I the underwritten *Ancien Eſchevin* and *Conſeiller Perpetuel de l'Hotel de Ville de la Rochelle, Sindic de la Chambre de Commerce de la dite Ville*, certify hereby, that I have made this Adjuſtment according to the Laws of this Kingdom, and agreeable to the Documents therein mentioned. Done at *Rochelle*, the Fourteenth of *November*, One Thouſand Seven Hundred and Forty-ſeven.

(Signed) *GASTUMEAUT.*

CASE IX.

REMARKS.

It appears from the foregoing Regulation, that the nett Proceed of the Cargo was calculated according to the Prices the Goods were ſold at. One of the Concerned had cauſed Inſurance to be made with the *L. A. C.* on one Quarter Part of the Cargo of *l. Sterl.* for the Owners Account. Without ſending any Invoice of the Coſt, he demanded the Payment at the Rate of 19 *l.* 5 *s.* 6 *d. per cent.* upon the Sum inſured of *l. Sterl.* as it had been paid by ſome private Aſſurers in *London*. But it was remonſtrated to the Aſſured, that it was neceſſary to ſee the Invoice of the Coſt of that Part of the Cargo which was inſured, as well as the Account, which was formed of the Sales thereof: For if it ſhould appear that the firſt Coſt being calculated at 11 *d. per* Livre, as was ſtipulated in the Policy, did, with the Addition of the Premium, amount to more than it ſtood charged in the groſs Average, then there would not be £. 19 : 5 : 6 to be paid, but ſo much leſs as it might amount to on this greater Sum. For Inſtance: If theſe 26 Boucauds, 6 Bques. 2 Tcons. 5 Qts. weighing 22022 lb. of Indigo (which contribute now at Liv. 3 : 19 : 3 for Liv. 87262 : 3 : 6 a Liv. 19 : 5 : 6, Liv. 16798) had weighed at *St. Domingo* neat 23000 lb. and were bought at 2 ½ Liv.

N°. D.

makes - - - - Liv. 57500
Charges - - - 1500

Liv. 59000

Aſſurance of Liv. 100 to pay Liv. 98
Deduct ½ *per cent.* on 98 $\frac{49}{100}$
½ *per cent.* on 100 $\frac{50}{100}$
36 *per cent.* Prem. 36 $\frac{75}{100}$

37 $\frac{74}{100}$

60 $\frac{26}{100}$

If for 60 $\frac{26}{100}$ muſt be inſured 100, for 59000 Liv.
there muſt be - Liv. 97909 $\frac{166}{260}$
at 36 ¾ *per cent.* - - 35981 : 11

Liv. 94981 : 11

At

CASE IX.

At which Rate, if the Aſſured had made his Inſurance to the full, he could, in caſe of Loſs, have received the ſaid Liv. 94981 : 11, and then the above Average of Liv. 16798 ought to be divided upon that Sum of Liv. 94981 : 11, which would amount only to Liv. 17 : 13 : 11 *per cent.* or if the Inſured had not made Inſurance for the Whole, then he ought to be regarded as his own Aſſurer for the Remainder. But as it appeared afterwards by the Invoices, which were produced, that the Cargo, with the Addition of the Premium, did not amount to a larger Sum than it was rated at in the groſs Average, according to the Price it was ſold for, the *L. A. C.* therefore paid the £. 19 : 5 : 6 *per cent.* upon the Sum they underwrote. N°. E.

Another Perſon had made Aſſurance with the *R. E.* C°. for £. 1400 *Sterl.* on half of the Ship, and for £. 1050 *Sterl.* on half of the Cargo for the Owners Account. As in ſetling a general Average in *France*, the Ship and Freight contribute only for half their Value, and the Ship having been valued at 5000 *l. Sterl.* in the Policy, it appeared plain enough from thence, that the Intention of the Inſured was to include, in this Valuation, the dear victualling of the Ship in *America*, which was to be gained again by the Freight, and to inſure the ſame, as is permitted to be done by the *French* Ordinance; but it ſhewed at the ſame Time, that this was not the Manner of doing it. N°. F.

Somebody in the Behalf of this Company made up the Account of the Loſs on the Cargo in the following Manner: N°. G.

The firſt Coſt amounts to -	Liv. 114202 : 4 : 1	
Whereof the Half is -	57101	
At 11 *d.* is - -	£. 2617 : 2	*Sterl.*
Policy and Commiſſion of £. 1400 -	7 : 4 : 6	
	£. 2624 : 6 : 6	
Premium of £. 3240, a 17 *per cent.*	550 : 16	
of £. 3240, to pay 98 for 100, is £. 3175 : 4 for -	£. 3175 : 16 : 6	

CASE IX.

L O S S.

Upon 57101 Liv. a 19 Liv. 5 ½ is Liv. 11008

at the Exchange of 32 *d.* for 3 Livres £. 482 : 3 *Sterl.*

to be divided upon £. 3240 at £. 15 : 1 : 11 *per cent.*

For £. 1400, to pay at £. 15 : 1 : 11 £. 211 : 6 : 10

leſs ½ *per cent.* - - - 1 : 1 : 1

£. 210 : 5 : 9

The Calculation of the Loſs on the Ship he made as follows:

The Ship being valued in *France* at 28000 Livres only, whereof no more than the Half was included in the Contribution, this upon Liv. 14000, at Liv. 19 : 5 : 6 *per cent.* would make Liv. 2698 : 10, and at 32 *d. Sterl.* £. 119 : 18 : 8 *Sterl.*

Which divided upon the Valuation of the Ship of £. 5000, would make to be paid £. 2 : 8 *per cent.* which of £. 1050 a £. 2 : 8, is - - £. 25 : 4

to pay at 98 *per cent.* 24 : 14

leſs ½ *per cent.* - 2 : 6

24 : 11 : 6

N°. H. On the other Side, the Inſured in *France* demanded, as the Ship was inſured at 5000 *l.* which at 32 *d.* make 112500 Liv. and ſhe, together with her Freight, having contributed for no more than

14000 Livres and 60736 } at Liv. 19 : 5 : 6 *per cent.* { Liv. 2698 : 10 / 11707 : 11 : 3

74736 Liv. Liv. 14405 : 11 : 3

That therefore it was no more than juſt to pay the whole Liv. 14405 : 11 : 3, upon the Sum of Liv. 112500, for which the Premium had been received, at the Rate of £. 12 : 16 : 1 *per cent.*

The

The *R. A.* C°. inſiſted on the other Hand, that they had no Ways engaged themſelves to inſure upon the Freight, and that their Refuſal to make any Inſurance on Freights in general, was well known to every Body, therefore they had no Concern with ſo much as had been charged in the Account to the Owner for the Freight, nor were they bound to abide by what was decided in *France* in this Matter. CASE IX.

Nay, it even ſeemed to ſome that the *L. A.* C°. had been too eaſy, in the adjuſting of this Loſs at £. 19 : 5 ½ *per cent.* It was therefore judged expedient to give the following Explanation of the Manner in which this Affair had been treated. N°. I.

Upon repeated Examination it was found, that the *L. A.* C°. had not committed any Error in adjuſting the general Average, and accordingly paying *l.* 19 : 5 ½ *per cent.* upon the Goods on board the Ship *Couronne*. Had the firſt Coſt of theſe Goods, (reduced at 11 *d. per* Livre) with the Addition of the Premium, amounted to a greater Sum than what they were rated at in this Contribution, they then ſhould not have paid quite ſo much as *l.* 19 : 5 ½ *per cent.* as it was obſerved by them in ſetling the groſs Average upon the Ship with Mr. *M*——*z*. But in this Caſe it amounted to pretty near the ſame Sum, whether the Value of the Goods was calculated at the Prices they were ſold for, deducting the Freight and Charges, or at prime Coſt, with Addition of the Premium, *viz.*

The Amount of the Goods delivered on board at *St. Domingo* was - -	Liv.	314775
To be fully inſured for that Sum, when only 98 *per cent.* are paid, the Aſſurance ought to be made for Liv. 38861., a 17 *per cent.*		66063
	Liv.	380838
And according to the Prices of the Sale, they are rated in this Average at -		377614
the Difference is - -	Liv.	3224

Which is but a trifling Difference in the Sum of 455474 Liv. or £. 45231, and amounts either Way to above 19 *per cent.* conſequently hardly worth While to controvert the Regulation made in *France* of £. 19 : 5 : 6 *per cent.*

How-

CASE IX. However as it was deſired, that the Opinions of impartial Merchants ſhould be procured, concerning the abovementioned Calculation, which makes the Loſs on the *Ship* to come to £. 2 : 8 for £. 100, or to £. 23 : 11 for the whole *Sum* inſured. A Merchant gave his Sentiments on this Subject in the following Manner :

N°. K.

Firſt, The Inſurers, which have underwrote upon the Riſk of the Hull of the Ship, are certainly to be diſtinguiſhed from the Inſurers on the Freight.

Secondly, The Inſurers in England are not obliged to approve of all Adjuſtments made in other Countries, nor to comply implicitly with foreign Cuſtoms, when their Unreaſonableneſs can be demonſtrated.

Thirdly, Yet as it is the Cuſtom at *London*, and in moſt other Places, that the Ship and the net Freight ſhall be obliged to contribute for their full Value towards a general Average, conſidering this Affair in that Light, the Inſured would equally be intitled to demand Liv. 19 : 5 $\frac{1}{2}$ *per Cent.* upon the whole Value of the Ship, being 28000 Livres, which makes £. 4 : 16 *per Cent.* upon 112500 Livres.

Fourthly, As the Premium was paid for the *Sum* of 112500 L. it ſeems evident enough from thence, that in the Value, for which the *Ship* was inſured, the Proviſions, *&c.* that ſhe had on Board, were included, and it is admitted in England itſelf, to include them therein ; It remained therefore to enquire : *a)* How much this *Ship* was actually worth at *St. Domingo*, when ſhe had all her Proviſions on Board ? and : *b)* How much ſhe produced net after the Voyage was performed with the Freight ? Now if no Inſurance at all had been made on the Freight, then the Owner ought to contribute towards the Liv. 14405 : 11 : 3 for the Profit or *Surplus* on the Freight, after deducting the Proviſions and *Sailors* Wages, and the Inſurer on the Ship, for the Value thereof, being Liv. 28000 with the Addition of the above mentioned Expences, it ought not however to fall on the *Sum* inſured of Liv. 112500 alone.

It is

It is not thought improper to remark in this Place, that upon the Foot of the French Ordinance, which forbids inſuring on Freight, a Perſon is not fully ſecured againſt Loſs in Reſpect to general Averages, which may happen in Inſurances on Ships, when the Expences of Fitting out are included, and aſſured together with the Value of the Ship, and as theſe Charges of Fitting out are naturally diſburſed for the ſake of the Freight, and are ſunk again in the ſame, it would be therefore always moſt adviſeable, to inſure the Value thereof abroad upon the Freight. The making Inſurance on the Freight on this Principle appears to be almoſt neceſſary, and to be attended with leſs evil Conſequences, than including the whole Expence of Fitting out in the Valuation of the Ship. When the Valuation is thus done in an Inſurance, and it afterwards proves neceſſary, that ſome Part be flung over-board, (towards which the Inſurer upon the Ship contributes only for half of the groſs or the whole net Freight) the Maſter or Owner might in that Caſe think it ſometimes more for his Intereſt rather to let the Ship run a-ſhore, than to ſave her either by throwing ſome Things over-board, or partly unloading of her: For when the Ship was ſtranded, they could recover from the Inſurer the Payment for the Value of the *Ship* and the whole Expence of Fitting out, as well as for the Freight of the Part, that was ſaved, which would be clear Profit; On the other Hand in Caſe of *Jettiſon*, they would not be intitled to demand from the Inſurers the Value of the *Share*, that falls upon the Freight in the general Contribution, altho' they were inſured to the Full, by which Means they might frequently fall a good Deal ſhort. CASE IX. N°. L.

In this particular Point, the French Ordinance of *Louis XIV.* 1681. which is ſo well digeſted in other Reſpects, ſeems to want Amendment: either by altering that Part of the Law, which utterly forbids the making Inſurances on Freight; as by *Num.* 678. or that Part of the Law, which directs that in *Caſe* of *Jettiſon* the Ship ſhall contribute no more than half of its Freight, and half of its own Value; as by *Num.* 754. For according to this, notwithſtanding the Owners ſhould fully inſure their *Ship* and Outfet, and pay a Premium for the ſame; it ſeems by the wording of the Law, as if they could not recover from their Inſurers any Thing of what the Ship ſhould contribute- N°. M.

CASE IX. tribute for the Freight, becauſe that is prohibited from being inſured. But as by *Num.* 670. it is expreſſed, that Ammunition and Proviſions may be comprehended in the Value of the Ship, and therefore may be inſured, and as theſe are Articles, which may be looked upon as loſt or ſunk, but are regained by the Freight: The Inſurer, who received a Premium thereon, ought, in our Opinion, to pay what they have contributed to the Average, though ſuch Contribution may have been made under another Denomination. *See Sect.* 54.

CASE X.

CASE X.

Shewing in two Inſtances, how a groſs and general Average was ſetled at London, *though in neither to a true Exactneſs.*

FIRST INSTANCE.

GENERAL Average upon the Ship *Pelham*, Cap. ——— *Reaſton* from *Carolina* to *London*, ſettled by Meſſ. *B—l*, *T—n* and *T—d*.

The Goods thrown over board amount to £. 868 : 3 : 8

The Freight of 1565 : 1 : 3 lb.

Rice a 6*d.* - £. 469 : 11 : 6

N°. A. Premium of Aſſurance 98 : 12 : 6

£. 568 : 4

Ditto, of 7 Caſks Skins a 55*d.* £. 19 : 5

—— of 28 Ox Hides 2 : 2

N°. B. Premium of Aſſurance 4 : 10

25 : 17

594 : 1

The Materials belonging to the Ship 85

£. 1547 : 4 : 8

To

CASE X.

To be divided upon £. 6071 : 7 : 4 *d. viz.*

Upon the Value of the Ship	£. 1189	
The Materials thereof -	85	
	£. 1274	
		£. 324 : 13 : 9
Goods ſafely landed	£. 2266 : 3 : 7	
- - thrown over board	868 : 3 : 8	
	3134 : 7 : 3	- 798 : 15 : 3
The Freight (*S*ailors Wages deducted . -	£. 1068 : 19 : 1	
Wages forfeited -	594 : 1	
	1663 : : 1	- 423 : 16 : 1
		£. 1547 : 5 : 1

REMARKS.

By the above Regulation it does not appear, whether the ſame was made according to the Prime Coſt of the Goods at *Carolina*, or according to the net Produce of them at *London*, conſequently no true Judgment can be formed of the Exactneſs thereof, but in either Caſe it is not allowable, that the Freight, which was loſt, could be demanded with the Addition of the Premium: for the 6 *Shill.* for a 100 Weight Freight of the Rice were not payable till after the Ship was arrived at *London*, conſequently the Premium on the Freight is included in thoſe 6 *S.* and there remains ſo much the leſs, as the Premium amounts to, for him, that makes the Inſurance on the Freight. N°. C.

As there are in *London* no Commiſſioners particularly appointed for the ſettling of Affairs relating to Inſurances and Averages as at *Amſterdam*, nor a Perſon to adjuſt the ſame upon Oath as at *Hamburgh*, neither are there any certain Laws relating to Aſſurances and Averages, therefore it is frequently ſubmitted to private Opinions, eſpecially when there is but a ſmall Difference, whether it be calculated either in one Way or the other, and Things will now and then be miſunderſtood. N°. D.

CASE X.

SECOND INSTANCE.

N°. E. AND ſo it happened by a like Caſe in ſettling a general Average in the Year 1743. upon Goods by the Ship *George*, Capt. — *Haliburton*, from *Carolina* to *London*, when the Agent, that was to demand the Payment of the Average, inſiſted, that the Loſs ſhould be calculated upon the Value of the Goods at *London*, deducting the Freight and Duties, but was obliged to acquieſce otherwiſe.

He accordingly formed his Account in the following Manner:

240 Barrels Rice ſhipped for *C.* a 28½ *d.*		£. 342	
191 Planks - for ditto a 4 *d.*		38 : 4	
380 Barrels Rice - for *O.* a 28½ *d.*		541 : 10	
1 Caſk Skins - for ditto -		45	
120 Barrels Rice - for *B.* and *B.* a ditto		171	
100 Barrels ditto - for *V.* a ditto		142 : 10	
6 Caſks Skins - for *F.* a 45 £.		270	
The Ship valued at *Carolina* -		1000	
Freight of 840 Barrels Rice weighed 3729 lb. a 4 *d.*	£. 745 : 16		
—— of 191 Planks, cont. 1080 Feet a 2 *d.* - -	9		
—— of 7 Caſks Skins a 30 *d.*	165		
	£. 930 : 6		
Deduct for Sailors Wages -	£. 276		
Pilotage -	8 : 6		
	284 : 6		
		646	
(It is not cuſtomary for the King's Goods to contribute to any Average, nor are ſuch Goods or any Part thereof, that may happen to be thrown over board, paid for) - - -		£. 3196 : 4	

Upon

CASE X.

Upon which Sum is to be made good, for the following Goods flung over-board:

To *C.* 9 Barrels Rice, a 28½ *d.* -	£. 12 : 6	1
45 Planks - - -	9	
To *O.* 83 Barrels Rice - -	118 : 5 :	6
To the *Ship* for Freight of 92 Barrels Rice, weighed 407 lb, a 4 *d.* -	81 : 8	
45 Planks - - -	2 : 5	
8 Tons King's Goods, a £. 3.	24	
To *R. Raſton* for Expences -	72 : 16	
	£. 320 : 10 :	6

Is equal to £. 10 : : 8 *d.* for 100

upon £. 380 : 4 to *C.* -	£. 38 : 2 :	11
586 : 10 to *O.* -	58 : 16 :	11
171 to *B.* -	17 : 3 :	1
142 : 10 to *V.* -	14 : 5 :	10
270 to *F.* -	27 : 1 :	9
1000 for the *Ship* -	100 : 6	
600 for the Freight -	646 : 17	
	£. 320 : 13 :	6

To this Account neither the Freighters nor the *London* Aſſurance Company, which had underwrote upon the Ship, made any Objection, but every one paid the Loſs accordingly.

It is, however well known, that even in *London* it has on ſome other Occaſions been admitted to make the Calculation of a general Average, according to the Value of the Goods at the Place, where they arrived, and *Charles Molloy*, a Barriſter at Law in *England*, who in the Reign of King *Charles II.* wrote a Treatiſe, *De Jure Maritimo & Navali*, mentions in the 2 *Book* 6 *Chap.* § XVI, that this was the Practice every where in his Day.

The *Committee*, that was appointed ſome Time ago by the Houſe of Commons to draw up an *Ordinance for Inſurances*, and conſiſted of eminent Lawyers and Merchants, was likewiſe of the ſame Opinion. N°. F.

CASE XI.

Shewing how a general Average was regulated at Hamburgh, *according to the Market Price of the Goods at the Place where they were landed.*

Hamburgh, the 24th of *July*, *Anno* 1725.

FROM an Atteſtation made on the 25th of *May* before the Admiralty of this City, it appears, that at the Requeſt of *John Koch*, Broker, on Behalf of the Concerned, there appeared perſonally before them Capt. *Miles Rowland*; *Arthur Mellaglihn*, Mate; *Anthony Hayes*, *Bryan Meade*, and *John Gibbeny*, Sailors; who all declared upon Oath, That they departed on the 21ſt of *February*, Old Style, from *Cette*, with their Ship the *Matthew*, whereof the ſaid *Miles Rowland* is Maſter: That ſhe was then tight and well found, being laden with Piece Goods, and bound to this Place: That they purſued their Voyage till the 6th of *March*, when they found themſelves in 42 Degrees, 52 Minutes Latitude, where they were overtaken by a violent Wind from Eaſt North Eaſt, and about Five o'Clock in the Evening a great Sea broke over them, which waſhed away their Boat, carried off one of their Anchors, and moreover damaged the Ship ſo much, that ſhe was full of Water between Decks, which obliged them to cut a Hole in the lower Deck, for the Water to run off: That likewiſe 5 Spars were broke in the Ship, and ſhe lay quite on one Side. In this Extremity, in order to ſave their Lives, as well as the Ship and Cargo, they found themſelves under a Neceſſity of throwing overboard about 23 Casks of Wine, and the ſame Number of Bales and dry Goods, in order to lighten the Ship; which had this good Effect, that every Thing elſe was preſerved, and they did purſue their Voyage till they reached *Ireland*, where they were forced to put into *Kinſale*, the 19th of *March*, by Reaſon of bad Weather, as their Ship was very leaky, and alſo to prevent further Damage. That they departed again from thence on the 6th of *April*, after the Ship was repaired, and then met again with a hard Storm in the Latitude of 50 Degrees, 30 Minutes, by which they loſt one of their

their Fore-ſails, with ſeveral other Sails, and received conſiderable Damage beſides: That on the 28th of the ſame Month they arrived in the *Elbe*, and on the 20th at *New Mills*. But having pumped ſome Wine and Brandy, and likewiſe perceived a Number of Rats aboard of the Ship; they therefore were apprehenſive that the Cargo might be a good deal damaged, notwithſtanding they had taken all due Care thereof, and had not embezzled any the leaſt Part of the ſame. All which is more at large ſet forth in the abovementioned Atteſtation. CASE XI.

In order to calculate this Loſs upon Ship and Cargo, according to the Uſage of the Seas, here follows firſt

A Calculation of the Capital. N°. A.

P——e D——z 3 Cheſt, containing 165 Bottles of Oil, a 1 Mk.	*Mks.* 165		
3 Ditto, containing 165 Bottles of Wine, a 8 Mks. - - -		82 : 8	
3 Ditto, with Raiſins and Cheeſe -		50	
	Mks.	297 : 8	
Deduct for Freight, Primage, and Duties		60 : 8	
Remain - -			*Mks.* 237
P---e B---e, 282 Hogſheads Wine, deducting 10 *per cent.* for Leakage, remain 254 Hhds. a 26 Mks.	*Mks.*	19812	
50 Butts *Picardan*, leſs 10 *per cent.* remain 45 Butts, a 26 Mks. -		3510	
20 Butts Brandy, containing 1397 Qrs. leſs 10 *per cent.* remain 1257 Qrs. a 26 Mks. *per* 30 Qrs. -		3268 : 3	
	Mks.	26590 : 3	
Deduct Freight, Primage, *&c.* *Mks.*	5400		
Cuſtom and Exciſe -	700		
Lighterage, Porterage, and Brokerage -	480 : 3		
		6580 : 3	
			20010

P---e

CASE XI.

P---e M---e, 22 Bales Almonds, weighing neat 11034lb. Part whereof were damaged, produced leſs 13 Months Diſcount - - *Mks.* 3413 : 8
10 Caſes qt. 720 Boxes Prunelles - 1288 : 9
41 Barrels ſmall Raiſins - 620

Mks. 5322 : 1
Deduct Freight and Primage *Mks.* 557 : 1
Duty, Charges and Broker 186
743 : 1
4579

P---e H---ſs, 2 Cheſts with Wine, and ſome trifling Things, coſt, as *per* his Account - - *Mks.* 60 : 15
Deduct for Freight - - 7 : 15
53

P---e D---t, 1 Caſe and 2 Barrels *Mks.* 350
Deduct Freight and Duties 38
312

J---s C---t, 88 Cheſts Merchandize, the Freight and Duties deducted - - 600

H---ch N---s, 9 Bales *Provence* Almonds, weighing 4280 lb. a 34 ½ Mks. with 13 Months Diſcount - *Mks.* 1357
6 Sacks Gauls, a 300 Mks. 1800
2 Casks Verdigreaſe, 950lb. - 950

Mks. 4107
Deduct Freight and Charges 307
3800

H---ch

CASE XI.

H---ch L---ph M---ek, 19 Bales *Provence* Almonds, Weight 9400 lb. a 37 ½ Mks. - -	Mks. 2982	
9 Bales *Valencia* ditto, Wt. 4500 lb. a 37 Mks. - -	1531	
8 Sacks Gauls - -	2400	
2 Casks Verdigreaſe, 1000 lb. -	1000	
	Mks. 7913	
Deduct Freight and Charges -	683	
		7230
A---i B---n, 6 Caſks Verdigreaſe, Wt. 2050 lb. - -	*Mks.* 2050	
Deduct Freight, Duty, and Charges	120	
		1930
The Ship and Freight, Sailors Wages deducted - - -		6000
	Mks.	44751

Calculation of the Average.

N°. B.

For Pilotage and Anchorage at *Kinſale*	£.	2 :	3 : 10	*Ster.*
For a Proteſt - -			18 : 6	
For Pilotage and Port Charges at *Falmouth* - - -		1 :	6 : 2	
For Light-Money, in all -		4 :	18 : 8	
For Pilotage and Expences in the *Downs*		3 :	5 : 6	
	£.	12 :	12 : 8	*Ster.*
make at 16 ¾ Mks. in current Money -	*Mks.*	211 :	10	
Pilotage at *Heiliglandt*, as *per* Receipt		33		
For Damage to the Ship, by the Holes cut in her to carry off the Water		12		

To

CASE XI. To be paid for the following Goods, which the Maſter flung overboard, *viz.*

220 Hogſheads *Frontignac*, at 26 Mks. to *P...e B...e* *Mks.* 1716		
Deduct 10 *per cent.* Leakage, and for Exciſe -	196	
		1520
1 Caſe belonging to *P---e H---ſs*		60 : 15
10 Bales Almonds for *P. M---e*, neat 5256 lb. a 34½ Mks. *Mks.* 1813 : 5		
Leſs 13 Months Diſcount	144 : 10	
		1668 : 11
3 Bales *Provence* Almonds for *H--- N---s*, 1920 lb. at 34½ Mks. - *Mks.* 662 : 6		
Leſs 13 Months Diſc.	52 : 13	
		609 : 9
5 Bales *Provence* Almonds for *H. L. M--k* neat 2415 lb. at 34½ Mk. *Mks.* 833 : 3		
2 Bales *Valencia* ditto, nett 1039 lb. a 37 Mks.	384 : 7	
	1217 : 10	
Leſs 13 Months Diſcount	97 : 2	
		1120 : 8
For the People's Declaration and interpreting - - -		8
To give Notice of the Average, and collecting the Invoices -		4 : 8
For my Commiſſion, 1 *per* Mill. -		44 : 12
For the Poor - - -		2 : 1
		Mks. 5295 : 10

DIVISION.

CASE XI.

DIVISION.

N°. C.

This general Average, amounting to Mk. 5295 : 10, being divided upon 44751 Mk. Capital for every 100 Mk. there is to pay Mks. 11 : 13 : 4.

P--e D--z	*Mks.* 237	*Mks.* 28 : 1
P--e B--e	20010	2366 : 14
P--e M--e	4579	541 : 14
P--e H---ſs	53	6 : 4
P--e D---t	312	36 : 15
J--s C---t	600	71
H---ch Neuhaus	3800	449 : 11
H--ch L---f M---ck	7230	855 : 9
A---i B---*n*	1930	228 : 6
The Ship *Matthew*	6000	710 :
	Mks. 44751	*Mks.* 5295 : 10

(Signed)

JURGEN GREVE,
Diſpacheur.

REMARK.

N°. D.

To illuſtrate the wide Difference there is between calculating a general Average by the Inſurers, at the Price Goods would fetch at the Place they were bound to, as has been very juſtly done in this Caſe, or when the ſame is made according to the firſt Coſt on board, let us for Example Sake ſuppoſe

That *A.* has ſhipped Oil in Flasks, which, with all Charges till on board, and the Premium of Inſurance, amounted to £. 100 *Sterl.* and according to the Price at the Place where they were to go, would render no more than £. 80

B. has Wine and Brandy, which coſt in like Manner £. 100, and would produce - 120

C. has Almonds, which coſt £. 100, and would yield - - - 160

D. is Owner of the Ship and Freight, and anſwerable for £. 100 Value of the Ship, and her fitting-out, in all - - - 120

£. 480

CASE XI. If of theſe there were obliged to be thrown overboard in the Voyage the Flaſks of Oil belonging to *A.* £. 80
the Wine and Brandy of *B.* - - 120

£. 200

Then would there be £. 200 to be paid for the general Average upon £. 480, which is £. 41 ⅔ upon £. 100, and is equal

To *A.* for his Value of	£. 80	£. 33 ⅓
B. Ditto -	120	50
C. Ditto -	160	66 ⅔
D. Ditto -	120	50
		£. 200

N°. E. If this Sum was calculated upon the reſpective Capital of the Coſt, and of the Ship, with the Expences of her fitting-out, amounting together to £. 400 only, then every one would have 50 *per Cent.* to pay towards this general Average. Now ſuppoſing that each of theſe *A. B. C. D.* had made Aſſurance to the full upon the Coſt for £. 100, there is no doubt when the Inſurer of *D.* ſees that he has contributed towards the Average for £. 160 whereas he has underwrote and received Premium for no more than £. 100, he will not think himſelf liable to bear more than the Proportion of 100 *l.* as having nothing to do with the further Charge that falls upon the Goods either by a particular Conjuncture, or by the Profit the Proprietor makes upon them; but that he ought to pay £. 41 ⅔ Sterl. only for the Sum underwrote by him as abovementioned.

N°. F. The ſame Argument may with equal Juſtice be made Uſe of by *A.* towards his Inſurer, that although he did contribute no more towards the Average than at the Rate of 41 ⅔ *per cent.* upon 80 *l.* being 33 ⅓ *l.* yet as the Inſurer had underwrote and received the Premium for 100 *l.* he ought likewiſe to pay him without Deduction the whole 41 ⅔ *l.* which, according to the Repartition, fell upon the 100 *l.* he had underwrote for, as

N°. G. having nothing to do with the Loſs on the Goods. But it is become a Cuſtom, that though Ships or Goods are inſured for larger Sums than they are afterwards rated at in the general Average, yet the Inſurers never allow to the Inſured any more than they are charged with in the Repartition. By which Means indeed the Inſurers in ſuch Caſes take the Advantage of

N. H. the Loſs of the Inſured: But it ought to be conſidered, if the Ship

Ship had been loſt on her Voyage, that then the Queſtion would not have been, whether the Goods would have produced leſs or more at the Place they were bound to; but upon the Inſured's bringing ſufficient Proof that the Goods, with the Premium included, coſt him 100*l.* the Inſurer would have been obliged to pay the full 100*l.* he underwrote, and no leſs: As on the other Hand the Inſurer of *D.* would not be anſwerable for more than the 100*l.* underwrote by him on the Goods, which yielded a Profit at the Market-Price. CASE XI.

CASE XII.

CASE XII.

Whereby is ſhewn how a general Average was obliged to be calculated at Hamburgh, *according to the Value of the Goods at the Place where they were ſhipped.*

Hamburgh, the 22d of *April*, 1723.

BY a Declaration made before our Admiralty on the 12th of *January* laſt it appears, that at the Requeſt of Capt. *Michael Wahn* there perſonally appeared before that Court *John Frider Stapenius*, Mate, *Jurgen Rudolff Seefeld*, Carpenter, *John Knuſt*, and *Henry Kloot*, Sailors; who upon Oath declared: That they did belong in the aforeſaid Capacities to the Ship the *Red Lion*, whereof the above *Wahn* is Maſter, and that they departed in her from the *Elbe* on the 25th of *November* laſt paſt, being loaden with Corn, and bound for *Liſbon*: That they had continual contrary Winds whilſt they were at Sea, ſo that they could not poſſibly make the Channel, but were drove back again into the Latitude of the *Texel*, and upon the *Doggers Sand*, the Sea very frequently breaking over them at the ſame Time. That on the 26th of *December* in the Night, they had the Misfortune to have their Bow-ſprit with the lower Yard and Sail broke to Pieces, and carried over-board by a great Sea: That likewiſe by the heavy rolling of the Ship, the Fore-Maſt, with the Fore-top-Maſt, Top-gallant-Maſt, Stay, Shrouds, Main-ſtay, Main-top-gallant-Maſt, with the whole Set of Sails, went over-board; all which they were obliged to cut away immediately, to get quit of them, leaſt by their working, the

CASE XII. Ship ſhould go to the Bottom; and that beſides they were forced to cut a Main-top-Stay in Pieces to cover and preſerve the Cables. Being then but about 28 or 30 Miles from *Heilige* Land, they found themſelves under the Neceſſity to return back to the *Elbe*, as they found it very difficult to ſteer the Ship. On the 27th they ſaw the Lights upon the *Heilige* Land, but were obliged to keep before the Wind. The 28th they were forced to let go 2 Anchors at once in 9 Fathom Water, and had that Night a violent Storm with Showers of Hail and Rain. The 30th it cleared up, when they began to weigh their Anchors, but could ſhip only one, and were obliged to cut the Cable of the other, and then ſteered their Courſe Southward; but the Wind being very variable, they were forced to come to Anchor again in 8 Fathom Water, before the Breakers of the Northern Flats, with a new Cable, never before wet: The Weather continuing exceſſive bad, they rode there till the 31ſt in the Morning, when the ſaid Cable parted; and as they did not know how far from the Anchor this Cable might be broke, they were obliged to cut away the Remainder of it cloſe to the Windlaſs, in order to bring the Ship before the Wind. At laſt the Ship came before the Wind, and then they ſteered their Courſe for *Heilige*-Land, where in the Afternoon they got three Pilots on board, and agreed with them for 100 Rixdollars, beſides ſome Expences they were at. That on the 1ſt of *January* in the Morning they came to an Anchor in the *Elbe*, when they found that ſeveral of the Clamps and other Timbers were broke by the Sea, and that many of the Pins and other Faſtenings had given Way, as likewiſe that the Rudder with the Iron Pin belonging to it were damaged. That on the 26th of *December*, whilſt at Sea, they were obliged to cut a Cable of four Strangs to Pieces, and to make thereof a Main-top-ſtay, with four ſmaller Stays upon the Stump of the Fore-Maſt and Shrouds for the ſame: That they hired an Anchor at *Cuxhaven*, and on the 3d returned to this City. That in caſe the Cargo ſhould prove damaged, the ſame was occaſioned by the frequent breaking of the Sea over them; for they had always a cloſe and tight Ship, the Hold being double lined, the Hatches covered with double Tarpaulins, and every Thing well ſecured with Matts; neither had they embezzled any Part of the Cargo, as is more at large ſet forth in the ſaid Declaration hereunto annexed.

As

As this Ship was obliged to be unloaden and repaired; and in order to make the Calculation of ſuch Damages and Loſſes, as concern the Ship and Cargo jointly according to the Cuſtom of the Sea, here follows firſt: CASE XII.

An Account of the Capital.

N°. A.

The Cargo, according to the Bills of Loading, conſiſts in the following Articles:

261 Sacks of Dantzick Barley, 12 Laſt, a 26 Rlrs. - -	*Mk.* 936	
451 Sacks Wheat, 20 Laſt, a 79 Rlrs.	4740	
318 Sacks Rye, 14 Laſt, a 45 Rlrs.	1890	
1050 Sacks, 20 whereof were put looſe into ſome of the others - -	767 : 13	
Charges till on Board - - -	536 : 3	
	Mk. 8870	
The Ship with fitting out, valued -	7000	
	Mk. 15870	

Account of the Average.

N°. B.

For the Bow-ſprit and its Supports -	*Mk.* 51	
- the flying Yard - - -	6	
- the lower Sprit-Yard - - -	12	
- the Fore-maſt, &c. - - -	75	
- the Yards to the Fore- and Fore-top-ſails - - - - -	27 : 8	
- the Fore-top-maſt - Mk. 15		
- the Fore-top-gallant-maſt 8	35	
- the Fore-Yard - 12		
as *per* Account Let. A.	*Mk.* 206 : 8	

For

CASE XII.

For a new Fore-sail as *per* Bill Let. B. -			109 : 4
- a Cros-jack-sail	Mk. 30 : 6	}	60 : 3
- the Fore-stay-sail -	29 : 13	}	
- a Fore-top-mast-sail	21 : 15	}	64 : 7
- a Cluver - -	42 : 8	}	
- new Shrouds to the Fore-mast, Fore-top-mast, Fore-top-gallant-mast and Stay, with running Rigging, as *per* Bill Let. C. - -			200
		Mk.	640 : 6

All the above mentioned were broke first, and then cut away and thrown overboard, that they might be no Hindrance in the Way, deducting therefore first $\frac{1}{3}$ Part, because they were all made new, there remain 427 Mk. $\frac{2}{3}$ whereof belong to the Ship only - *Mk.* 284

N°. C.

and $\frac{1}{3}$ to the general Average upon Ship and Cargo - - - *Mk.* 143

For a main Top-stay-sail cut in Pieces to cover the Cables - - -	20	
- a Horse-line cut for rigging, and Shrouds to the Mast - - -	110	
- the Cable, that was cut, has been valued by the Elders of the Ropemakers Company, as *per* Bill Let. D. at 536 Mk. for which put - - -	500	
- the Anchor belonging to it, 689 lb. a 20 Mk. - - -	137 :	8
- the *Stock* to ditto - -	18	
- the second Cable, that broke and was afterwards obliged to be cut, is valued at 306 Mk. whereof $\frac{2}{3}$ belong to the Ship alone Mk. 200, and here - -	100	

For

CASE XII.

For the Anchor 800 lb. falls upon the Ship alone, ſince it was not cut, but the Cable parted. N°. D.

- the Rope to the Buoy, upon the Ship alone.
- Valuation of the Damage to the Cables 12
- a Rope to a Buoy cut away with it 15
- the Pilots of *Heiligland* - - 300
- Expences of the Pilots for Boats and going a-ſhore there - - 16 : 8
- particular Damage to the Ship, remains for the Ship alone. N°. E.
- an Anchor hired at *Cuxhaven* - 18
- ſending the ſame back again - 6
- Augmentation of the People's Wages for unloading and loading again - 306
- *Hamburgh* Pilotage coming in again 75 : 12
- ditto going out the ſecond time - 42
- the Declaration of the People - 8
- unloading 46 Laſt Corn, a 1 Mk. - 46
- carrying up into the Granaries - 72 : 10
- Duty upon Re-importation of the Corn 80
- fetching down again from the Granaries, and carrying on board - - 132 : 6
- three Months Rent of the Granaries - 54
- meaſuring the Corn - - 24 : 12
- turning the ſame - - - 75 : 12
- my Commiſſion, 1 *per* Mil - 15 : 14
- the Poor - - - 1 : 12

Mk. 2330 : 14

DIVISION.

CASE XII.

DIVISION.

N°. F. Which general Average of Mk. 2330 : 14 being divided upon the Capital of 15870 Mk. makes to pay for every 100 Mk. Fourteen Marks Eleven Shillings, I say Mk. 14 : 11

Mr. *P-l I-ch* for the Cargo of - -	*Mk.* 8870 . . .	*Mk.* 1302
For the Ship *Red Lyon*	7000 . . .	1028 : 14
	Mk. 15870	*Mk.* 2330 : 14

In Witness whereof I the Dispacheur, or Officer appointed by Authority for setling of Averages, have signed this Adjustment, and sealed the same on the Outside. In *Hamburgh*, as above

JURGEN GREVE.

REMARK.

N°. G. The Calculation of this general Average happened to be made at the Place, where the Ship was loaden, and to which Port she was obliged to return to be unloaded and repaired, and therefore the Contribution of the Goods towards the common Loss could in this Instance be calculated no otherwise than according to their Value at the Place where they were shipped, or the first Cost of them.

N°. H. From this and the foregoing Example is further plainly to be observed the Difference, mentioned in § 54 of our *Essay*, and which the Dispacheur at *Hamburgh* paid a due Regard to: For when he makes the Goods in the former Case contribute according to their Prices at the Port of Delivery, then he taxes the Ship according to the Value it is esteemed at coming from Sea and the net Freight, but when the Goods contribute according to their Value at the Place of Shipping or the first Cost, as in this Instance, then the Ship is rated according to its Cost and fitting out, or more properly, according to the real Value thereof in the Condition, it returned in, and the Remainder of the fitting out, and the Provisions; but not the Freight.

N°. I.

CASE

CASE XIII.

Shewing how a general Average was ſettled at Leghorn.

THE Commiſſioners of the Chamber of Aſſurances and Averages in the City of *Amſterdam*, having ſeen ſeveral authentick Writings, drawn up at *Copenhagen* and other Places, from the Contents whereof it appears, that the Ship the *Victoria*, commanded by Capt. *Gabriel Aſchbohm*, departed from *Croonſtadt* the 2 *Septemb.* 1747. being bound for *Leghorn* with a Cargo of ſeveral Sorts of Goods, in the Proſecution of which Voyage the ſaid Ship run a-ground near Drago, from whence by the Aſſiſtance of a Number of Hands, ſome Lighters and taking out Part of the Cargo ſhe was by main Strength heaved off, and got a-float, but being become very leaky, and much damaged by the beating againſt the Ground, and having afterwards met with ſeveral hard Gales, by which they ſuffered many Accidents, the Maſter and Mariners were obliged, for the Preſervation of their Lives and of Ship and Cargo, to carry her into the Road of *Copenhagen*, where ſhe was unloaded, in order to be repaired. That on the 5th *January* 1748. after the Cargo was taken on board again, and the Ship ready to depart, the Froſt ſet in ſo ſevere, that ſhe was detained there till the 13 *April*, when they went from thence, and proſecuted their Voyage; All which is ſet forth more at large in the above ſaid Writings.

Here annexed is an Account ſigned by *C..d C..r* Widow and Son as Agents for the ſaid Ship, containing the Damage ſuffered and Expences diſburſed in Relation to this Affair, amounting in all to the Sum of - - *Fl.* 9202 : 10 N°. A.
which the ſaid *C..d C..r* Widow and Son requeſted to be divided by way of general Average upon the Ship and the Goods ſhe had on board, producing for that Purpoſe the Documents from the Shippers, ſpecifying the Quality, Quantity and Value of the Goods put on board, to which was added the Valuation of the Ship as follows:

CASE XIII.

P--tt and *L--e*, of *J- n B--ff*

Sundry Goods, amounting to Fl. 195383 : 14 comp. . . . *Fl.* 195375

T--n and *P--s* of *H--b C--g*

83 Packs Russia Hides, amount. Fl. 23793 : 15 comp. 23800

Ditto, 41 Packs Wax and 7 Packs Russia Hides, amount. Fl. 10716, comp. 10725

Le B--r and *B--e*

14 Packs Russia Hides, amount. Fl. 4000 comp. 4000

J--n B--ff

10 Packs Ravensduck, amount. Fl. 2496 : 17 comp. 2500

T--r P--ff W--ff

24 Casks Cavier, amount. Fl. 2458 : 2, comp. 2450

S--r and *M--ff*

5 Packs Russia Hides, amount. Fl. 1000 1000

The above mentioned Ship valued by the Commissioners . . . 28000

Fl. 267850

N°. B. Now in order to come to an Adjustment of this general Average, the Commissioners have examined the several Articles in the Account of the Damage and Expences, and approved of the same, for the Sum of *Fl.* 9198

Adding thereunto

For the Commissioners Dues . .	267 : 17
To the Secretary for his Trouble .	10 : 10
To the Messenger of the Chamber .	4 : 4
For Stamps . . .	10 : 16
To the Poor . . .	7
To ditto, *per* Ballance . .	16 : 19 : 8
Fl.	9508 : 13 : 8

Which

Which ſaid Fl. 9508 : 13 : 8 being divided upon Fl. 267850, the Commiſſioners find, that each Hundred thereof ought to bear Fl. 3 : 11. And the Commiſſioners adjudge accordingly, that the ſaid Damage and Coſts muſt be born and paid by the Shippers of the Goods and the Maſter of the Ship in the following Proportions: CASE XIII.

P--tt and *L--e* of *J--n B--ff* of Fl. 195375	to pay	*Fl.* 6935 : 16 : 8	N°. C.
T--n and *P--s* of *H--h C--g*			
23800	-	844 : 18	
Ditto 10725	-	380 : 14 : 8	
Le B--r and *B--e*			
4000	-	142	
J--n B--ff			
2500	-	88 : 15	
T--r P--ff W--ff			
2450	-	86 : 19 : 8	
S--r and *M--ff*			
1000	-	35 : 10	
The Maſter of the Ship			
28000	-	994	
Fl. 267850	to pay	*Fl.* 9508 : 13 : 8	

Done by the ſaid Commiſſioners
the 31 May 1748.

(was ſigned)
J. HOP Hhs:

Thereunto was annexed:

A Manifeſt of the Cargo of the Ship Victoria, *Capt.* Gabriel Aſchbohm *from* St. Peterſburg *to* Leghorn.

CASE XIII. For *P--tt* and *L--k* of *J--n B--ff*

3927 Barrs Iron, Pood 5000
66 Caſks Cavier, P. 1975 : 20 lb.
300 Packs Ruſſia Hides, P. 7676 : 20 lb.

50 ditto Wax, P. 500

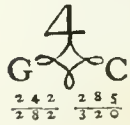
79 ditto Ruſſia Hides, P. 1655 : 17 lb.

65 Bundles Hemp, P. 3217 : 20 lb.

47 Packs Ruſſia Hides, P. 1191 : 48 lb.

valued at Rub. 83116 : 28 a 47 Stivers. *Fl.* 195383 : 14

For *T--n* and *P--s* of *H--h C--g*


83 Packs Ruſſia Hides, val. Rs. 10125 a 47 Stivers . . 23793 : 15

41 ditto Wax, Rs. 3710

7 ditto Ruſſia Hides 850

Rs. 4560 . . 10716

For *Le B--r* and *B--e*

14 Packs Ruſſia Hides, worth 4000

For *S--r* and *M--ff*

5 Packs Ruſſia Hides, Value 1000

For *J--n B--ff*

10 Bales Ravenſduck, Rub. 1062 : 45 2496 : 17

For *T--r P--ff W--ff*

24 Caſks Cavier, valued Rub. 1046 2458 : 2

Fl. 239848 : 8

Hereunto

Hereunto was affixed:

An Account of the Demand for the Damage happened to the Ship called the Victoria, *commanded by Capt.* Gabriel Aſchbohm, *and the extraordinary Expences diſburſed in ſaving the Ship and Cargo on her Voyage from* Croonſtadt *in* Ruſſia *to* Leghorn. *In order to be adjuſted and divided as general Average upon the ſaid Ship and Cargo.*

It appears from the Tranſlation of an Inſtrument dated the 9 *October* 1747. and which contains a Declaration made on the 6 ditto by the Mate, Boatſwain, Carpenter and three Seamen, all belonging to the ſaid Ship, before the Notary and Auditor General at *Copenhagen*, and confirmed under Oath the 9 ditto before the Chief Preſident, Burgomaſters and Counſellors of that City, all which is likewiſe more at large ſet forth and atteſted in the ſundry Inſtruments herein afterwards to be referred to (in all which Tranſlations the Originals thereof are incloſed): That this Ship was loaden at *Croonſtadt* with Iron, Cavier, Ruſſia Hides and other Marchandize, and departed with the ſame for *Leghorn* on the 2 *September* 1747. in good Condition. That on the 13th they paſſed by *Ertholm* and on the 14th by *Moen*, and then the Weather becoming very thick with Rain, Thunder and Lightning, they durſt not venture to make the Flats, but remained that Night at Anchor, which having weighed again on the 15th in the Morning, and ſteering their Courſe for the Buoy of *Drago*, they had the Misfortune, notwithſtanding all their Precaution the Ship was turned athwart by the Storm, got a-ground, loſt its Way and was no longer to be governed by the Rudder, but ſat faſt immediately, that they then put out their Boat, and carryed out an Anchor, but could not get the Ship off again, they therefore hoiſted a Signal of Diſtreſs, in order to get Aſſiſtance, whereupon a Boat and ſome People ſoon came a-board from *Drago*, with whom they agreed for 450 Daniſh Rix-dollars to get the Ship a-float and bring off the Goods, after which a great Number of Hands came on Board in Veſſels, and having taken out part of the Cargo, they heaved the Ship off by main Strength, and got her a-float, but very much damaged by violent beating on the Ground and

N°. D.

Case XIII. and againſt large Stones, that after this ſhe was brought to an Anchor, on the 16th, while the Wind was very high and the Weather very thick, they began to heave at the Capſtern in order to get up the Anchor, and to take that Part of the Cargo, which was unloaded, on board again in the Road of *Copenhagen*, but the Wind was ſo violent, that they could not poſſibly purchaſe their Anchor, upon which they veered out almoſt the whole Cable, but as the Anchor itſelf parted ſoon after, they then let go a ſecond, the Wind all this While ſtrongly encreaſing with Showers of Rain, when the firſt Cable parted, upon which the Ship riding only with the other Cable, which they had veered out to the very End, this Cable likewiſe ſoon parted afterwards by the Violence of the Storm, and then the Ship drove. Whereupon they hoiſted their Fore-ſail and Fore-top-ſail to bring her too, and then cut away the two Cables for the Benefit and for ſaving of Ship and Cargo, and the Ship then coming too, they ſailed for the Road of *Copenhagen*, and came to Anchor there, where they took the Goods, which they had unloaded, in again, and likewiſe received on board again the two Anchors, they had cut away, and were fiſhed up by the Pilots of *Drago*. After which the Captain having examined the Ship; and the Mate as well as the Reſt of the Ship's Company declaring, that they would not purſue the Voyage, without the ſame was firſt repaired and fitted out again, he thereupon went on Shore for that Purpoſe, and on the 20th they got a King's Pilot on Board, on the 23d the Ship was brought within the Boom, and afterwards to the Ship Builders Wharf belonging to the Agent *Andreas Biörn*.

N°. E. It further appears from the Tranſlation of an Inſtrument, being a Declaration made and ſwore to as before on the enſuing 3 and 5 February 1748 by ſeveral of the Ship's Crew, that they were obliged to unload their Cargo there, in order to have the Ship repaired, which was done accordingly, after the ſame had been legally inſpected and the Damage been valued by Per-

N°. F. ſons appointed for that Purpoſe (according to the tranſlated Inſtrument dated the 2 November 1747.)

That on the 5 January 1748 the Ship was put in good Condition, and the Cargo taken on Board again, as likewiſe the Sails and other Ship's Materials together with neceſſary Proviſions, ſo

that

that they were ready for unmooring the Ship, but durſt not venture it, becauſe it blew ſo very freſh towards Evening, and when the Weather cleared up on the 10th ditto, the Froſt ſet in ſo ſevere that Night, that the Water was entirely froze over ſo hard, that People could paſs the Ice, which continuing to the 15th ditto, it was then reſolved, to cut the Ship out of the Ice, and to nail Boards round about it, in order to fence it againſt the Ice. That on the 16th they endeavoured to break through it, and to move the Ship, but by the Continuance of the Froſt were obliged to deferr it till the 29th, when the Ship was with much Difficulty on the 2 Febr. brought through the Ice (which was forced to be cut open every now and then) into deep Water, free from the floating Ice. But that nevertheleſs for the Preſervation of Ship and Cargo, they were obliged to continue laying there till the 13th April, by Reaſon of this continual Froſt, and the Floating of the Ice, when they ſailed from thence and purſued their aforeſaid Voyage; All which is more at large ſet forth in a third Declaration made and ſwore to in Manner as above mentioned by ſome of the Officers as well as Sailors on the 6 and 8 April, and is likewiſe confirmed by a Letter from the Captain to the hereunder written dated the $\frac{2}{13}$ April. CASE XIII. N°. G. N°. H.

By Means of all theſe Diſaſters and Accidents abovementioned the following Damage has been occaſioned, and the following Expences have been diſburſed for the Preſervation of Ship and Cargo, viz.

The Tranſlation of the Inſtrument, which contains the Report of the five Perſons appointed at the Requeſt of the Captain by the Court of Juſtice at *Copenhagen*, ſhews, how they valued the Damage, that happened to the Ship and its Materials by running a-ground, and by the breaking and cutting of the Cables. Whereof only the following, being the cutting of the Cables, is brought here, as valued by them, *viz.*

The ſame weighed 26 Shippounds, and were worth 15 Rlrs. *per* Shipp. makes	*RixDrs.* 390	N°. I.
Deduct the neat Proceed of that Part thereof, which was ſaved and ſold, being	35 : 4	
Remain	*RixDrs.* 354 : 2	

Which

CASE XIII. Which at 13 *per cent.* make *Hollands* Rix-dollars 313 : 26 Stiv. which is - *Fl.* 783 : 16

Paid to the People, that by their Aſſiſtance, and with the Help of their Veſſels, hove the Ship and Cargo off from the Ground as afore-ſaid, according to the Agreement, mentioned in the tranſlated Inſtrument under Let. G. and as *per* Receipt,

N°. K.

Rect.			
N°. 1.	N°. 1. - -	*Rix D^rs.*	450
2.	For Pilotage to *Copenhagen* -		4
3.	Salvage of the 2 Anchors -		20
6.	Warehouſe-Rent and Lighterage for keeping and preſerving the Cargo during the Time that the Ship was repairing -		420
7.	Wages to the Ship's Company (as *per* Receipt, N°. 7. at the Concluſion) underneath.		

Diſburſed during the Time of Repair,

For 3 Yyns, 24 Days	*Rlrs.*	74
2 Pickketets		8
3 Shroſtietten		12
2 Swagboomen		8
3 Large Lighters		18
4 Props in the Hold againſt the Maſt		8
Scaffold -		5
Port-Money -		7 : 5 : 4
To receive the Cargo, and deliver it again		36
		176 : 5 : 4
		1070 : 5 : 4

For

Rect. For Medicines in the Sickneſs of
N°. 11. ſome of the People, as *per* Receipt - *Rix Drs.* 10: 4:14
12. —— the following from the Account of *S. G. Kruger*,
Travelling Expences to *Copenhagen* *Rix Drs.* 16
Poſtage - 5:16
—— 21:16
14. To *Hinrichſen*, the Surgeon, in the People's Illneſs 4
To ditto, for Phyſic 5: 4: 2
15. For ſundry, as appears
16. from an Account of the Broker *C. Wilder* (who aſſiſted the Captain) and is ſigned by him, *viz.*
For Waggon-hire *Rix Drs.* 4:4: 8
Boat-hire, 2 Poſt-ſtages 1:2:12
Pilotage from the Road to the Wharf 6
the firſt Declaration 4:4: 8
To the Magiſtrates, for the Oath to ditto 6:3
the Appraiſers (ſee E.) for their Trouble and Expences 17:4
the Magiſtrate, for appointing the Appraiſers 3:1: 8
the Meſſengers relating thereunto - 1
For Porterage of unloading the Cargo 20:3
Ditto of carrying the ſame on board again, and ſtowing away 42:2
Drink-Money to encourage them to be more expeditious 3:3:12

CASE XIII.

Hire of five ſingle Jacks *RixDrs.* 33 : 2
Ditto of five double ditto 37 : 3
Materials in ſtowing the Cargo 6 : 4
At the Cuſtom-Houſe, and to ſundry, for entering the Ship in, and clearing it out again 15 : 4
For unloading in the Road 6
To the ſaid Broker himſelf, for his extraordinary Trouble and Aſſiſtance of the Ship and Cargo, *&c.* 50
261 : 2

17. For cutting the Ship out of the Ice, according to Agreement and Receipt - - 94

RixDrs. 1467 : 5 : 4

a 13 *per cent.* Diſcount, make *Hollands* *RixDrs.* 1299, being - - 3247 : 10

N°. L.

For Lodging, Board, and Expences of the Captain in 127 Days a-ſhore *RixDrs.* 52 : 30
26. For Beer during that Time for the Porters who unloaded and loaded the Ship again 43 : 44
27. Paid for two Declarations 11 : 36

RixDrs. 108 : 14

239 : 10

N°. M.

5. Damage to a Jack (G) which broke in ſtowing *RixDrs.* 4 : 4

Lodging

Lodging and Board of the People a-ſhore, while the Ship lay on her Side, and Travelling Expences of the Captain to *Elſineur* (H) 17:4:12

For Labour and Wood to preſerve the Ship from the floating Ice, when it was cutting out, which has not been valued, but put at leaſt at (B) 25

29. According to the Account (N°. 29.) in the above Inſtrument under Let. G, the Monthly Wages and Proviſions for 18 Seamen, from the 26th of *Sept.* 1747, when ſhe run a-Ground, and during the Time ſhe was got off again, and brought into the aforeſaid Port, where ſhe was repaired, being to the 3d of *Feb.* 1748, make 4 Months 11 Days, in all 812:1:4

Ditto from the 3d of *Feb.* to the 8th of *April*, 1748, following, ſo long they were obliged to lay there, according to the Declaration marked Lt. C. being 2 Months and 5 Days, and amount to 403

1215:1:4

N°. N.

CASE XIII.

To the Notary for the 3d Declaration, Let. C. 4:4:8
To the Magiſtrates for ditto - - 6:3
To the Broker, for his Trouble about it 2
13:1:8

The Captain's Diet and ſmall Expences concerning the above, from the 3d of *Feb.* to the 8th of *April*, 1748 (H) 12
For Brokerage of Bills of Exchange, Poſtage and Commiſſion charged by *Cl. Hs. Guſtmeyer* at *Copenhagen*, in his general Account, in three Articles - 174:3:5
186:3:5

Rix Dr. 1462:2:13

N°. O. Make at 13 *per cent.* Diſcount *Hollands* Rix-dollars 1294:12, or - 3235:12

N°. P. Premium of Aſſurance of *Fl.* 8500, diſburſed for the Salvage of the Ship and Cargo, with the Premium of 12 *per cent.* and ½ the Policy added thereunto - *Fl.* 1021:16

N. B. This Premium of Aſſurance comes inſtead of the Intereſt upon Bottomree, which muſt elſe have been charged, and would amount to a good deal more.

N°. Q. Paid to , the Tranſlator, for tranſlating the ſeveral Inſtruments abovementioned, as *per* his Bill - - 61:8

N°. R. To the underwritten (the Widow *Cd. Ch--s* and *S--n*) for their manifold Trouble, and the Aſſiſtance they have afforded towards ſaving Ship and Cargo during the Time

above-

abovementioned; their writing and receiving of Letters, with the Poſtage paid for them, diſburſing the Sum of 8500 *Fl.* and upwards, making Inſurance for the ſame, and likewiſe for Intereſt of Money advanced as *per* Account - 512

To *A. Mylius* for ſetling, ſolliciting, and taking out this general Average, *&c.* with the Stamp - - 100 N°. S.

N. B. *Fl.* 9201 : 12 *Fl.* 9202

Amſterdam, 1748, *May* 16.

(was ſigned)

C---d Ch---r, Widow, and Son,
as Agents for the ſaid Ship.

Agrees with the ſeveral Originals reſpectively ſigned,

Amſterdam, the 10th of *June*, *An.* 1748.

BENJAMIN PHAFF,
Not. Pub.

We the underwritten Public Notaries in *Amſterdam* do certify and atteſt, that *Benjamin Phaff*, who has ſigned the above, is likewiſe a Public Notary here, and that full Credit and Belief is always given, as well in as out of Court, to all Copies, Acts and Inſtruments paſſed before him, and ſigned by him accordingly. In Witneſs whereof we have ſigned theſe Preſents in *Amſterdam*, the 10th of *June*, 1748.

H. BARELS,
Not.

S. DORPER, Not. *D. VAN DEN BRINK*, Not.

Honour-

CASE XIII.

Honourable Sirs,

N°. T. THE Deputies nominated and appointed by the Worſhipful Magiſtracy, for ſetling the Average upon the Swediſh Ship called the *Victoria*, commanded by Captain *Gabriel Aſchbohm*, with Reſpect to the Charges the ſaid Maſter has been at by running into the Port of *Maaſtland*, in the *Downes* and at *Dover*, for the common Benefit, and for the Preſervation of Ship and Cargo, in order to purſue his Voyage, which Charges as well as the Bottomry, the Detention of the Ship for four Days, and the Expences attending this Reference with Our Commiſſion muſt be divided upon the full Value of the whole Cargo, the half of the Ship and one third of the Freight, make their Reports as follows:

Firſt comes a Specification of the neat Value of the Goods, whereof this Cargo conſiſted, the half of the Ship and one third of the Freight.

Shipped to the Conſignment of Meſſ. *R-u*, *M-a* and *P-t*

RM	3927 Three thouſand nine hundred twenty ſeven Barrs of Iron 66 Sixty ſix Caſks Cavier 300 Three hundred Packs Ruſſia Hides 79 Seventy nine Packs ditto 50 Fifty Packs Wax	*Fl.*166410 coſt	*Dol.*70023
ID	47 Forty ſeven Packs Ruſſia Hides -	17880	7524
G C	83 Eighty three Packs Ruſſia Hides -	23800	10015
S	41 Forty one Packs Wax 7 Seven Packs Ruſſia Hides	10725	4513

Shipped

CASE XIII.

Shipped to the Consignment of Mess. H-r and J-y

65 *Sixty five Bundles Hemp* 11085
10 Ten Bales *Sail-cloth* 2500 } 5716

Shipped to the Consignment of the Widow M-l and C-n

14 Fourteen Packs Russia Hides 4000 1683

Shipped to the Consignment of Mr. P. H. H-s

5 Five Packs Russia Hides 1000 420

Shipped to the Consignment of Mr. A. B-i

24 Twenty four Casks Cavier 2450 1031

Fl. 23985o *Dol.* 100925

The half of the *Ship* amounts 4500
The third Part of the Freight amounts to 2300

Total *Dol.* 107725

Next follows the *Specification* of what is to be distributed as Average.

Two hundred forty four *Doll.* eight *Soldi* and one *d.* to re-imburse the same *Sum* laid out by the Captain for the common Benefit by touching at the Ports of *Maasland*, *Downes* and *Dover*, in order to be repaired, and get his Clearage, including therein the Bottomry of 12 *per Cent.* according to Your Honours Decree *Dol.* 244 : 8 : 1 N°. U.

Further for the Demorage of four Days, that the *Ship* was detained by the abovesaid Means 22

For Consulage at *Leghorn*, and other Expences in that City, for *Summons* and Translating the Writings delivered in . . 22

For the Fees in this Cause taxed at . 49

For Our Commission . . . 2

Dol. 339 : 8 : 1

Which

CASE XIII.

Which Three hundred thirdy nine *Doll.* eight *Soldi* and 1 *d.* being the Amount of the ſaid Expences, when divided upon the One hundred ſeven thouſand ſeven hundred and twenty five *Doll.* of $\frac{8}{Rs.}$ as the neat Valuation of the Goods, this *Ship* had on board, half the Value of the *Ship*, and one third of the Freight, comes out as follows:

For every hundred Dollars	*Dol.*	$6 : 3\frac{2}{3}$
For every thouſand Dollars		$3 : 3$

This is, what we have to report to Your Honours in Conformity to Your *Sentence* of the 3d inſt. and which we do hereby accordingly, *&c.* *Piſa* the 5 October 1748.

Your Honours

obedient Servants

GIO. BATT. FIESOLI,
GIO. BATT. BERROTTI.

The 5th October 1748.

The Honorable Gentlemen Counſellors for maritime Affairs in the City of Piſa, *&c.*

In the Cauſe for Determination of the Average, between Capt. *Gabriel Aſchbohm*, Commander of the Swediſh Ship called the *Victoria*, on the one Part, and Mr. *P. W. H-s*, and other Receivers of the Cargo of the ſaid Ship, on the other Part:

Having heard the above Calculation read, and conſidered thereof, we approve the ſame, and it is our Pleaſure, that the ſame ſhall be regarded as approved of in every Part, and command a due Obſervance thereof accordingly. In Preſence of

RANIERI MAGNOLFI
GAETANO CURRINI } as Witneſſes.

GIOV. GAET. MAESTRINI, Coadj.

We the underwritten Counſellors at Law, dwelling in this City of *Leghorn*, do herewith certify to every one, whom it may concern, that the abovementioned Mr. *Gio. Gaet. Maeſtrini*, is Coadjutor to the Magiſtrates of *Piſa*, as he has ſigned himſelf, and that full Credit and Belief has always

ways been and is ſtill given to his Handwriting as well in as out of Court, Witneſs

CASE XIII.

J. D. FRANCESCO MARCHESINI, atteſt as above, &c.
J. D. GIO. FRANC. NIBBI, atteſt, &c.

This preſent Atteſtation was ſigned, delivered and ſwore to by the above Meſſieurs, *Franc. Marcheſini*, and *Gio. Franc. Nibbi*, Doctors, in the Preſence of me the underwritten Notary. In Witneſs whereof

I ANTONIUS CHIOCHINI, *Not. Publ. Florent.* have ſigned the ſame.

We the underwritten Merchants, dwelling in this City of *Leghorn*, do certify, that Mr. *Antonio Chiochini*, who has ſigned the above, is a Publick Notary of *Florence*, as he writes himſelf, and that full and undoubted Credit is given to his Acts and Handwriting as well in as out of Court. Witneſs

GIUSEPPE PINFOLD,
GUGLIELMO AIKMAN.

In the Name of God, Amen!

We, *Nicolo Cambi* and *C. Quintilio Galcotti*, Noble Florentines, and by His Imperial Majeſty's Authority Counſellors for maritime Affairs in the City of *Piſa*, and Judges in Ordinary of all Cauſes, whether Civil, or relating to Naval, mercantile or intermixt Affairs:

In the Cauſe depending before Us and Our Court between Capt. *Gabriel Aſchbohm*, commanding the Swediſh Ship called the *Victoria*, Plaintiff on one Part, and Mr. *P. W. H-s* and other Merchants, Receivers, Reſpondents, on the other Part:

We having peruſed the Remonſtrance delivered by the ſaid Captain as Plaintif, ſetting forth, *&c.*
. . . . . The Certificate from the Conſul delivered at the ſame Time, containing, *&c.*
. . . . . other Papers produced likewiſe by the ſaid Captain of the following Contents, *&c.*
. . . . . Another Petition of ditto Captain, and Tenor as follows, *&c.*

CASE XIII. . . . . A Writ of Exceptions by the ſaid Meſſ. *R-u*, *M-a* and *P-t*, containing, *&c.*

. . . . . A Reply of the ſaid Captain of the following Contents, *&c.*

. . . . . Another Plea of Exceptions of the abovementioned *R-u*, *M-a* and *P-t*, ſetting forth, *&c.*

. . . . . A Writing of Juſtification of the ſaid Captain, of the following Tenor, *&c.*

. . . . . Two Summons's, delivered by Word of Mouth in Behalf of the reſpective Parties to their Sollicitors, *&c.*

. . . . . The Summons for this Day and Hour, in order to give Judgment after every Thing elſe requiſite was read over, and the Circumſtances to be conſidered, had been maturely weighed, and

N°. W. Once again imploring the moſt holy Name of God, We ſay, pronounce, adjuſt and declare, That the Caſe of Captain *Gabriel Aſchbohm*, commanding the Swediſh Ship called the *Victoria*, againſt Meſſ. *P. W. H-s* and others, Receivers of the Cargo of ſaid Ship, as the ſame is ſet forth, repreſented, reported and petitioned for by him the ſaid Captain, is conformable to the Truth, and otherwiſe ſo circumſtanced, as the ſame can lawfully be pretended, demanded or obtained: We do hereby declare, that the ſaid Captain, the abovementioned Ship and his Ship's Crew ſhall be acquitted and cleared, and We accordingly acquit and clear them herewith from all and every Loſſes, Detriments, Damages by Sea-Water or Waſte, that have already been found, or may ſtill be diſcovered hereafter on any Part of his aforeſaid Cargo, which he carryed to *Leghorn*, and there diſcharged, ſince thoſe Loſſes, Detriments, Damages and Waſtes were occaſioned by the Storms he met with and endured by the Ship's running on the Sands near *Drago*, by unloading and taking the Marchandize on Board again, firſt in the ſaid Place, in order to lighten the Ship and to facilitate the getting her and Cargo off again, next in the Road of *Copenhagen*, where he likewiſe unloaded, that he might be able to have his Ship repaired,

paired, and to proſecute his Voyage, as likewiſe by being met and detained by ſeveral Privateers during the Voyage, which he made with his ſaid Ship and Cargo from the Port or Road of *Cronſtadt* to *Leghorn*, and not by any Fault, Miſtake or Neglect of the Captain, the Ship or its Crew; Acquitting him, as We do hereby acquit him from the ſaid Loſſes, Damages and Waſtes ſuſtained on theſe Goods to the Prejudice of the Perſons to whom they do or may belong, and who have run the Riſk of Wind and Weather upon them; Condemning, as We hereby do, the ſaid Meſſ. *P. W. H-s* and other Receivers to pay to the ſaid Captain clear and truly the full Freight expreſſed in the Bill of Lading or other Contract for Freight, without the leaſt Deduction or Abatement, not only for the Goods, which he has brought to *Leghorn*, and delivered there entire, dry and in good Condition, but alſo for thoſe, which were damaged, ſpoiled and rotten; And We, moreover, condemn the ſaid Gentlemen Receivers, to contribute along with the abovementioned Captain towards the Average, the firſt according to the Value and Prices of the Goods, and the other for half the Value of the Ship and one third of the Freight, in order to ſatisfy and indemnify the Charges, which the Captain has diſburſed for the common Benefit by running into the Port of *Maaſtland*, and likewiſe into the *Downes*, whereto he was carried with his Ship and Cargo by an *Engliſh* Privateer, and obliged to go from thence to *Dover* to enter his Proteſt againſt the Captain of the Privateer, all which Expences together We have adjuſted at the Sum of Two hundred forty four *Doll.* eight *Soldi* one *d.* of $\frac{8}{Rs.}$; including in that Sum the Bottomry at the Rate of 12 *per Cent.* as well as the Proviſions and Pay of the Ship's Company during four Days, that they were detained, to procure the Releaſe of Ship and Cargo from the Attachment of the Privateer, which We alſo ſettle at Twenty two *Doll.* of $\frac{8}{Rs.}$, conformable to which, with the Addition of the Law Charges, and the Commiſſion of the Calculator, the neat Adjuſtment is to be made, and We do hereby depute and appoint Meſſ. *Johan Baptiſta Fieſoli* and *Johan Baptiſta Berretta* to make the ſaid Adjuſtment accordingly, reſerving to Ourſelves however the Approbation thereof.

Case XIII.

N°. X.

CASE XIII. Further, We declare that the Regulation of the Average concerning the Loſs and Expences, which the ſaid Captain has ſuffered, as well by bringing the ſaid Ship off from the Sands near *Dragoe*, where it ſat faſt; as alſo by unloading and taking the Goods on board again, firſt in that Place, and afterwards in the Road of *Copenhagen*, for Cauſes and Reaſons hereabove ſpecified, and more at large ſet forth by ſeveral Acts, referred to in the ſaid Regulation, as the ſame has been ſettled by the Gentlemen Commiſſioners of the Chamber of Aſſurances and Averages at *Amſterdam*, ſhall ſtand, and is hereby confirmed: And we accordingly condemn the ſaid Mr. *H---s*, and the other Gentlemen Merchants and Receivers, that each of them do make good and truly pay to the ſaid Captain ſo much as the Proportion upon their reſpective Shares amounts to at the Rate of 3 Dollars, 11 Soldi of $\frac{8}{Rs.}$ *per Cent.* at which the Average has been ſettled at *Amſterdam*, which Average is to be reduced into Dollars of $\frac{8}{Rs.}$ in the Regulation which we have ordered to be made hereabove; and we diſpenſe hereby with all and every neceſſary, cuſtomary and lawful Ordinances, as well in regard to the abovementioned Average, as alſo to that which is to be ſetled at *Leghorn* as aforeſaid, and likewiſe to the Freights, as above, *&c.* and therefore, *&c.* not only, *&c.* but in all other Reſpects, *&c.*

N°. Y.

This preſent Sentence was and is herewith given, by the abovementioned illuſtrious Lords Counſellors for Maritime Affairs in the City of *Piſa*, and was read and publiſhed by me the Underwritten, this 3d Day of *October*, 1748, in Preſence of

RANIERI MAGNOLFI, and GAETANO CURRINI, } Witneſſes.

GIO. GAETANO MAESTRINI, Coadj.

We the underwritten Counſellor at Law in this City of *Leghorn*, do certify for the Truth to every Body whom it may concern, that the abovementioned Mr. *Gio. Gaetano Maeſtrini* is Coadjutor in the Court of Juſtice at *Piſa*, as he

he ſtiles himſelf, and that full and undoubted Credit al- CASE XIII.
ways has been and is ſtill given to his Hand-writing, as well in as out of Court. Witneſs

I Dr. *FRANCESCO MARCHESINI*,
teſtify as above with my own Hand-writing.

I Dr. *GIO. FRANCESCO NIBBI*,
atteſt, *&c.* with my own Hand-writing.

This preſent Atteſtation was ſigned, delivered, and ſwore to upon the Holy Bible, by Meſſrs. *Franceſco Marcheſini*, and *Gio. Franceſco Nibbi*, Doctors, Counſellors at Law, in this City of *Leghorn*, before me the underwritten Notary. In Witneſs whereof, *&c.*

(L. S. N.) I *ANTONIUS CHIOCCHINI, Notarius Publicus Florentinus*, have ſigned the ſame to the Glory of God. 1748.

We the the underwritten Merchants dwelling in this City of *Leghorn*, do certify for the Truth to every Body whom it may concern, that Mr. *Antonio Chiocchini* is a Public Notary of *Florence*, as he has ſigned hereabove, and that full and undoubted Credit always has been, and is ſtill given to all his Acts and Hand-writing, as well in as out of Court.

Witneſs

GIUSEPPE PINFOLD,
GUGLIELMO AIKMAN.

Extract from the Captain's Proteſt at Leghorn.

On the 2d of *April*, New Stile, ſailed from *Copenhagen*, in 12 Hours paſſed the *Sound*, and in Days found himſelf on the Height of *Maſterland*, with a great Storm, and let go his Anchor to ſtop the Current; drove a-ground, got off again the 16th, and went under Sail, and the ſecond of *May* was viſited by a *Flemiſh* Privateer upon the *Zingels*, and afterwards by an *Engliſh*, who took from him 24*l. Sterl.* and afterwards another, who carried him into the *Downs*, where he was

CASE XIII. was detained 4 Days, and the 5th Day ſailed again; was afterwards fired at by another Privateer, who made him pay 9 *l. Sterl.* for firing; the 26th of *June* was viſited by an *Engliſh* Privateer at the Iſles of *Hieres*, who robbed him of 2 *l. Sterl.* the 2d of *July*, Old Stile, arrived at *Leghorn*.

Theſe Averages

N.B. From *Amſterdam* at £. 3 : 11
From *Leghorn* at 6 ⅔

were adjuſted at *London* by the *Royal Excha.* and *London Aſſurance* Companies at £. 3 : 6 *per cent.*

CASE XIV.

CASE XIV.

Shewing how a particular Average on Sugar was calculated at Hamburgh.

Hamburgh. Anno 1721, the 1ſt *July*.

ASSURANCE made for Account of Mr. *C---s C---o de C---o* from *Liſbon* hither for the Sum of 3000 Marks Banco upon 10 Cheſts Sugar, ſhipped by him on board the *Antonetta* Galley, Capt. *Jeronymus Thormoy*, which, according to Bill of Loading and Invoice, amount to 826m512 Rees, and are valued in the Policy at 4 Mks *per* Mill. Rees, without Premium, is - - - - *Mks.* 3306 : 1

N°. A.

Premium a 7 ¼ *per Cent.* -	239 : 11	
Premium upon ditto a 7 ¼ *per Cent.* -	17 : 5	
Mks. 3563 : 1		
Whereupon have been inſured *Mks.* 3000		
and left uninſured	563 : 1	
Mks. 3563 : 1		

The above 10 Cheſts have, as *per* Invoice, weighed in the Country neat 375 Arrobes 22 lb. which at 30 lb. make 11272 lb. of our Weight, and amount at 9 ¼ *d*, with 8 ⅔ *per Cent.* Diſcount, to - - - *Mks.* 2998 : 7

But

But as the above 10 Cheſts proved damaged by Sea-Water, they were ſold by Order of the Aſſurers to the beſt Bidder.

N°. 36, 37.	2	Cheſts neat	1955 lb.	a 7 $\frac{15}{16}$	*Mks.* 484 : 15
48,	1		926	a 8 $\frac{1}{16}$	233 : 5
44,	1		111	a 6 $\frac{11}{16}$	23 : 3
42,	1		977	a 7 $\frac{3}{4}$	236 : 10
38, 43 } 45, 47, 50 }	5		5314	a 9 $\frac{1}{4}$	1536
				Mks.	2514 : 2
Deduct 8 $\frac{2}{3}$ *per Cent.* Diſcount					200 : 8
				Mks.	2313 : 10
Deducted from - -					2998 : 7
Makes the Loſs -				*Mks.*	684 : 13

N°. B.

To which muſt be added for *extra* Charges,

To the Captain, for general Average of *Mks.* 2500, a *Mks.* 4 : 3 : 6 -	105 : 8
To *Preus*, the Notary, for Atteſtations, *&c.*	4 : 8
For Brokerage of 5 Cheſts ſold at Public Sale	7 : 8
Cooperage and Porterage - -	2 : 8
Mks.	804 : 13
Deduct *Agio* of *Mks.* 120, a 130 *per Cent.*	27 : 11
The whole Loſs *Mks.*	777 : 2

The above Mks. 777 : 2 being divided on the Value of Mks. 3000 Banco, come to Mks. 25 : 14 : 6 for every Mks. 100, as *the Valuation of the* 4 *Mks. Banco*, per *Mill. Rees is not inſiſted on*, in order to ſhew the Equity to the Aſſurers. N°. C.

(was ſigned)

J. C. W---R.

REMARKS.

CASE XIV.

REMARKS.

N°. D. In the above Calculation of the Loſs it is not juſtly obſerved, that in Order to ſhew the Equity to the Aſſurers, the Valuation of 4 Mks. *per Mill.* Rees was not inſiſted on, and by that Means in the Diviſion upon Mks. 3000, the Loſs amounted to

N°. E. 23 *Mks.* 14 *s.* 6 *d. per Cent.* For it appears at firſt View, that upon the Amount of 3563 *Mks.* 1 *s.* as they were valued, the

N°. F. Loſs would come to no more than 21 *Mks.* 13 *s.* 2 *d.* for every 100 *Mks.* and ought to be reckoned as follows:

Upon *Mks.* 3000 for the Aſſurers	*Mks.* 654 : 11	
563 for the Proprietor, on ſo much he was uninſured	122 : 5	
		Mks. 777

N°. G. But if we reflect, on the other Hand, that the firſt Coſt of theſe Sugars, as it was valued, amounted to *Mks.* 3563 : 1, and if they all had arrived ſound, could have been ſold for no more than *Mks.* 2998 : 7, from which the Freight and Charges are ſtill to be deducted; which demonſtrates that theſe Sugars, even free from Damage, would have rendered no ſmall Loſs to the Proprietor, and therefore the ſaid *J. C. W---r*, in deducting of what the Sugars now produced, *viz.* *Mks.* 2312 : 10

from what they would otherwiſe have yielded,

being - - - 2998 : 7

N°. H. has ſhown more Equity than probably many others would have done, if the ſame Caſe had befell them.

N°. I. However, to make this Account quite exact, the ſame might have been ſtated in the following Manner:

Five Cheſts of Sugar damaged, weighed at *Liſbon*, as *per* Invoice, 186 Arr. 30 lb. which, at 30 lb. *per* Arr. make in *Hamburgh* (but this Calculation being compared with the Weight of the ſound Sugar, it will be found that an Arrobe of Sugar from *Liſbon*, after Deduction of Tare Allowance for good Weight and Sweepings, produces only 28 $\frac{1}{2}$ lb.) 5602 lb. a 9 $\frac{1}{4}$ *per Cent.* - - *Mks.* 1621 : 1

Deduct 8 $\frac{2}{3}$ *per Cent.* Diſcount - 129 : 4

Mks. 1491 : 13

CHAR-

CHARGES.

Freight, a *Mks.* 14 *per* Cheſt	*Mks.* 70	
Ordinary Average - -	7	
Primage and Stader Duty -	5 : 10	
Cuſtom a 18 ½ Speties *per* Cheſt. with 30 *per Cent.* Agio - -	7 : 8	
Admiralty, of *Mks.* 700 with 15 *per Cent.* Agio - -	8 : 1	
Lighterage, Porterage, and Cooperage	3 : 12	
Brokerage, a 1 ½ *Mks.* - -	7 : 8	
Mks. 109 : 7 *s.* a 130 *per Cent.*	84 : 4	
Commiſſion a 2 *per Cent.* -	29 : 13	
		114 : 1

If there had been no Average, they would have produced - - - *Mks.* 1377 : 12 N°. K.

But now the ſame were damaged, they fetched only:

2 Cheſts	1955 lb.	a 7 $\frac{15}{16}$ *gr.*	*Mks.* 484 : 15	
1	926	a 8 $\frac{1}{16}$	233 : 5	
1	111	a 6 $\frac{11}{16}$	23 : 3	
1	977	a 7 $\frac{3}{4}$	236 : 10	
			Mks. 978 : 1	
Deduct 8 $\frac{2}{3}$ *per Cent.*			78	
			Mks. 900 : 1	

Ordinary Charges, as above *Mks.*	84 : 4	
General Average - -	105 : 8	
Preus, the Notary -	4 : 8	
Commiſſion a 2 *per Cent.*	18	
		212 : 4
	Mks.	687 : 13
Conſequently they yielded leſs		689 : 15 N°. L.
	Mks.	1377 : 12

CASE XIV. Which *Mks.* 689 : 15 being divided upon the abovementioned Sum of *Mks.* 3563 : 1, according to the Valuation in the Policy, but which, by an exact Computation, comes to *Mks.* 3564 : 8, will make 19 $\frac{7}{20}$ *Mks.* to be paid by every 100 *Mks.* whereof ought to be charged

To the Assurers, on *Mks.* 3000,		insured *Mks.* 580 :	8
To the Proprietors on	564 : 8	not insured 109 :	4
	Mks. 3564 : 8	*Mks.* 689 :	12

N°. M.

CASE XV.

CASE XV.

Shewing how a particular Average was computed at Hamburgh *upon some Goods shipped for* Cadiz.

N°. A. *H. B.* at *Hamburgh* shipped in the Year 1719, for Account of *J---n P---n*, at *Cadiz*, on board the Ship *Cadiz Galley*, Capt. *Andrew Gottschall* for *Cadiz*,

6 Chests Silesias, Qt. 288 Shock, a 6 $\frac{1}{2}$ Rix-dollars, with 8 $\frac{1}{3}$ *per Cent.* Discount	*Mks.* 5168 :	2
1 Pack Qt. 306 ps. Sangall, a 5 Mks. 14 s.	1797 :	12
2 ps. $\frac{8}{4}$ *Hohenst.* Wrappers -	27	
2 Packs Qt. 206 ps. *Breslau* Linnen, a 7 $\frac{1}{2}$ Mks.	1545	
2 ps. *Hohenst.* Wrappers -	26 :	8
1 Pack Qt. 118 ps. *Freist* Linnen, with 8 $\frac{2}{3}$ *per Cent.* Discount - -	651 :	9
1 Pack Qt. 296 ps. Lawns, a 7 Mks. 13 s. with 8 $\frac{2}{3}$ *per Cent.* Discount -	2128 :	1
For Duty outwards, and Charges -	211 :	12
Commission a 2 *per Cent.* - -	231 :	1
	Mks. 11786 :	13
Premium of Mks. 11000, Assurance a 5 *per Cent.* Commission $\frac{1}{2}$ *per Cent.* Brokerage $\frac{1}{4}$ *per Cent.* -	632 :	8
Premium upon ditto, a 5 *per Cent.* -	31 :	11
	Mks. 12451	

Accord-

CASE XV.

According to an Atteſtation from *Cadiz* ſome of theſe Goods were delivered damaged there, and the Damage was valued by the Appraiſer, thereunto appointed at 695 Dollars 5 Rials Rp^ta^. N°. B.

H. B. computed this Sum, or 2076 Mks. upon the Capital of Mks. 12451, and demanded of the Aſſurers 16 $\frac{1}{16}$ *per Cent.*

The Accomptant of Averages on the contrary calculated the Capital in the following Manner - *Mks.* 11786 : 13

Aſſurance a 5 $\frac{1}{4}$, and Commiſſion $\frac{1}{2}$ *per Cent.*	677	11
Re-aſſurance - - - -	38	14
	Mks. 12503	6

And for the Loſs he reckoned, for Reaſons which he did not ſpecify, inſtead of 692 Dollars 5 Rs. only 620 Dol. or 450 Ducados, a 119 d. - - *Mks.* 1673 : 7 N°. C.

For 2 *Spaniſh* Atteſtations - -	18	
For his Commiſſion, a 1 *per Cent.* -	11	
For the Poor - - -	1	1
	Mks. 1703	8

Which divided upon the Capital, the Aſſurers ſtands charged with *Mks* 13 : 10 *s. per* 100.

Here the Queſtion ariſes, what his Reaſons might be for this Abatement from 695 Dol. 5 Rp^ta^. to 620 Dollars? It is anſwered: That the Inducement to ſuch a Deduction may have been either a Diminution of the Duties upon damaged Goods, or the Conjuncture and Profit, which was included in the Valuation, as the ſame was made according to the Market Prices at the Place where the Goods went to, and not where they came from: And as by the Atteſtations of the Appraiſers commonly nothing farther is ſaid than that they have ſeen a Bale or Cheſt of ſuch a Mark, containing ſuch a Quantity of Pieces or Ells of Linnen; whereupon they appraiſe the Sea Damage to be in the Whole ſo many Rials or Dollars, without explaining how much an Ell or Piece would have been worth if not damaged; and it is known that they always allow enough, ſo as to make it worth the Buyer's While to give the higheſt Market-Price for it; and therefore the Owner reaſonably ought to bear N°. D.

CASE XV. a Part of it upon his Profit, or deduct it in favour of the Inſurers. And it is from hence that ſo many groundleſs Diſputes have aroſe on ſeveral Occaſions, and that the Accounts of Averages were in former Times ſeldom made up in a proper Manner, and with that due Accuracy (as is obſerved in theſe preſent Caſes) of which the Inſtance before us is a Proof.

For Example: Suppoſing that among the abovementioned Goods the Average had happened

On 6 Cheſts, containing 1152 ps. Sileſias, and among them 950 ps. were damaged, and ſuch Damage valued at - -	*Mks.* 475	
296 ps. Lawns, whereof 150 ps. were damaged, and this Damage valued at -		217 : 5
	Mks. 692 :	5

Then the Accomptant, in order to make his Account quite exact, ought to have required to be informed,

Firſt, The Prices at which the Appraiſer rated theſe Goods,
N°. E. if they had been found.

Secondly, The Abatement in the Duties by Reaſon of the Average.

Thirdly, The particular Cheſts and Numbers of the Goods, that agree therewith, and the firſt Coſt of them.

As for Inſtance, if we ſuppoſe that the ſaid 950 ps. Sileſias had all been found, and rated one with another at 17 Rp^ta^. make - - - - *Rpta.* 16150
and 150 ps. Lawns as above, a 30 Rpta. 4500
Rpta. 20650

then the uſual Charges would have been

The Proportion of Freight for 950 ps. Sileſias - -	*Rpta.*	156
For 150 ps. Lawns -		24
Duties of 950 ps. Sileſias - -		1187
150 ps. Lawns - -		374

Petty

Petty Expences - -	33	
Commission, Brokerage, and Warehouse Rent - - -	826	
		2600
and the nett Proceed would have been		*Rpta.* 18050
which at 119 *d. per* Duc. make		*Mks.* 6085 : 13
But as they were damaged, compute		
950 Pieces, a 17 Rpta. -		*Rpta.* 16150
150 a 30 - -		4500
		Rpta. 20650
allowed the Buyers for the Damage 692 Dol. - - -		5541
		Rpta. 15109
The Charges whereof are		
Freight as above -	*Rpta.* 180	
Duty 1561, deducting $\frac{1}{3}$ extraordinary Allowance -	1041	
Petty Expences -	33	
The Attestation of the Appraiser	110	
Commission, Brokerage and Warehouse Rent, 4 *per Cent.*	604	
		1968
		Rpta. 13141

Consequently the 18050 Rpta. have been lessened 4903 Rpta. in their Value, being at 119 *d. per* Duc. *Mks.* 1655 : 2, and makes 27 $\frac{1}{3}$ *per Cent.*

It might likewise be calculated according to the prime Cost of the Goods shipped, in the Manner following, *viz.*

288 Shock, or 1152 Pieces of Silesias amount to Mks. 5168 : 2 s. which for 950 ps. is		*Mks.* 4261 : 14
296 Quarter Ps. of Lawn cost Mks. 2128 : 1 s. which for 150 ps. is - -		1078 : 8
Charges - - -		100
Commission 2 *per Cent.* - -		108 : 12
		Mks. 5549 : 2

Insu-

CASE XV. Insurance at $5\frac{1}{4}$ *per Cent.* Bank, and Brokerage $\frac{1}{2}$ *per Cent.* current Money, and reduced to Bank at 130 *per Cent.* make . 334 : 15

Mk. 5884 : 1

The Damage ought therefore to be thus charged, *viz.*

Mk. 5884 : 1	To the Insurer, which at 27 $_s$ is - -	*Mk.* 1600 : 5
201 : 12	To the Owner, . . ditto	54 : 15
Mk. 6085 : 13		*Mk.* 1655 : 4

And proportioning the above Mk. 1600 : 5 on the whole Sum of Mk. 12451, being the amount of the Goods shipped, the Insurers, instead of $13\frac{10}{16}$ *per Cent.* ought to have paid no more than $12\frac{1}{5}$ *per Cent.*

N°. F.

CASE XVI.

CASE XVI.

Shewing how a particular Average on Goods shipped for Lisbon, *was regulated at* Hamburgh.

REGULATION.

Hamburgh, 10 *July*, 1719:

BE it known, that *Th. J--* and *J. van B--* procured Insurance to be made on two Packs of Linnen at *Hamburgh* and from thence to *Lisbon*, in the Ship called the *Prophet Daniel*, Capt. *Albert Peters*, who sailed from the *Elbe* the 23 *December*, and on the 23 *January* met with so great a Storm, that he was obliged, for the Preservation of the Ship and Cargo, to put into *Yughall* in *Ireland*, and there to repair his Ship. Of all which, on his Arrival at *Lisbon*, he produced the necessary Certificates: authentick Copies whereof are hereunto annexed (sub Let. *A.*). And whereas the Linnens insured, as aforesaid, appeared to have received Damage by Salt-Water as set forth in the Certificate annexed (sub Let. *B.*), we make the Regulation thereon as follows, *viz.*

By

CASE XVI.

By the Bill of Loading it appears, that the two Packs inſured, as before mentioned, contained 74 Pieces of raw *Oſnabrigs*, meaſuring together 6024 Ells, and are valued in the Policy and inſured in the Sum of Mk. 2100 Bank-Money, Premium included.

13 Pieces of the above Goods, containing 1016 Ells, were found to be damaged by Salt-Water: therefore it is to be computed, that as 6024 Ells are valued and inſured at Mk. 2100, ſo 1016 Ells will amount to *Mk.* 354 : 3
Which 1016 Ells the Appraiſer declared upon Oath, that, if they had not been damaged, they would have ſold for 140 *Reis per Ell*, but in the Condition they were, yielded no more than 90 *Reis*, by which a Loſs inſued of 50 *Reis per Ell*, which is $37\frac{5}{7}$ *per Cent.* N°. A.

The Inſurer therefore ought to be charged as follows, *viz.*

For $354\frac{7}{3}$ Mk. at $37\frac{5}{7}$ *per Cent.* is	*Mk.*	133 : 9
For the two *Portugueſe* Certificates 1680 *Reis*, is - - - - -		5 : 5
For Tranſlating the Vouchers Mk. 8 : 4, a 130		6 : 6
For Commiſſion making the Regulation, a $\frac{1}{3}$		7
	Mk.	152 : 4

Which Mk. 152 : 4 divided on Mk. 2100, makes the Average $7\frac{1}{4}$ Mk. *per Cent.* to be paid on the Whole.

JURGEN GREVE.

REMARK.

But we apprehend, that a good Deal more Accuracy ought to have been obſerved in the foregoing Calculation: becauſe it is notorious, that an ample Allowance in the Duties is always made on damaged Goods; and therefore the Account would have been nearer the Truth, if it had been formed as under *viz.*

1016 Ells.

CASE XVI. 1016 Ells at 140 *Reis*, as they would have ſold at, had they not been damaged - *Reis* 142m240

Deduct 23 *per Cent.* from the ordinary Duty (which at 60 *Reis per Ell*, makes 60m960 14m021

128m219

1016 Ells damaged, at 90 *Reis per Ell* - - - 91m440

Paid only $\frac{5}{3}$ of the Duties above 4m674

86m766

The Average would amount to *Reis* 41m453

N°. B. And according to this Account it would have come out but at $32\frac{33}{100}$ inſtead of $37\frac{5}{7}$ *per Cent.* as ſettled by the preceding Regulation; ſo that the Inſurers were apparently injured thereby.

But to have rendered it ſtill more exact, it ought to have been ſtated in the Manner following, *viz.*

1016 Ells at 140 *Reis*, if not damaged, would have yielded as above - *Reis* 142m240

Duties - - -	*Reis*	14m021
Proportion of Freight -		2m752
Brokerage $\frac{1}{2}$ *per Cent.* -		m711
To the Poor 2 *per Mille*		m284
Commiſſion 3 *per Cent.* -		4m267
		22m035
Neat Proceeds	*Reis*	120m205

Which at 42 *d. per Cruzade* makes - *Mks.* 394 : 6

Brought

Brought over *Mks.* 394 : 6 CASE XVI.

But by being damaged
1016 Ells sold at no more than
90 *Reis* - - - 91m410
Duties - - 4m674
Freight - - 2m752
Brokerage - - m457
To the Poor - m183
Commission - 2m743
10m809

Neat Proceeds *Reis* 80m631

Which at 42 *d. per Cruzade* is - *Mks.* 264 : 5

Difference *Mks.* 130 : 1

Whereof the Proprietor ought to bear for his Proportion of Mks. 40 : 3 uninsured *Mks.* 13 : 4
And the Insurer on Mks. 354 insured - - *Mks.* 116 : 3
And for Certificates - - 5 : 5
Translation of Vouchers 6 : 6
Commission on the Regulation - - 7

Make *Mks.* 134 : 14 instead of Mks. 152 : 4.

CASE XVII.

CASE XVII.

How the Loss of a Spanish Prize, called the Nympha, *was adjusted with the Insurers in* London.

IN *March* 174$\frac{6}{7}$ the Agents of several Privateers, called the *Royal Family Privateers*, received Advice from their Commodore, that they had taken and carried into *Lisbon* a Spanish Register-Ship, called *La Nympha*, bound from *Cadiz* to *La Vera Cruz*, with a rich Cargo, which was said to be worth
N°. A. upwards of £. 160000 *Sterl.* The Agents ordered her forthwith to *London*, and in the Beginning of *May* began to make Insurance on this Prize, valuing her in their Policies at £. 150000, including the Premium, adding moreover the Clause: "And "this Policy shall be a sufficient Proof, not only of the "Amount or Value of the Interest, but also of the Property, "in the said Goods, tho' not condemned.

N°. B. In the whole £. 105800 were underwrote from 4 to 5 Guineas *per Cent.* either in *London*, *Bristol*, or *Exeter*, and the latter End of *May* the Commodore was advised, that in this Insurance the Sea-men were to be concerned as far as £. 50000, being what their Prize Money might amount to, or what had been advanced them.

N°. C. It was hoped they naturally would have endeavoured, that no Time should be lost in getting this Prize home: but it seems the Merchants at *Lisbon*, who had the Commission for supplying the Squadron with Money and giving them other Assistance, did not willingly chuse to let slip the Opportunity of making a handsome Profit by so valuable a Cargo. They therefore made use of all Sorts of Persuasions with the Commodore and Officers to prove, that it would be more advantagious to dispose of the Whole at *Lisbon*, and particularly urged that it would ease the Agents in *London*, who were already in great Disburse, and on whom they still must draw, by receiving Money on Account at *Lisbon*.

The

CASE XVII.

The Commodore *&c.* conſented to a conditional Sale of a large Quantity of Quickſilver on board the Prize at the low Price of 300 *Rees* a Pound. On this Sale upwards of 41000 *Milrees* were paid on Account, but it was ſtipulated, that if the Agents in *London* approved not of it by the firſt Packet that ſhould arrive, the Bargain ſhould be void, repaying the Money with Intereſt at the Rate of 6 *per Cent. per Annum.* The Agents diſapproved of this Sale, and ſent Letters of Credit to repay the Money, repeating their Orders, that the Ship and the whole Cargo ſhould depart for *England* with the firſt Convoy. A Convoy ſailed in *Auguſt*; yet tho' the Agents repeated Orders came to *Liſbon* the latter End of *June*, the *Nympha* was kept at *Lisbon*, and the Privateers, inſtead of going on a Cruize, remained there alſo from *April* to *July*.

N°. D.

N°. E.

The Merchands at *Lisbon* moreover, notwithſtanding the Value of another Prize under their Direction which they had ſold, continued drawing large Sums on the Agents in *London*, who conſequently were in very great Diſburſe, on Account of theſe Sea-men, to whom large Sums of Money were advanced, and many of them overpaid, nevertheleſs they were ſo worked upon, as to make a Sort of Proteſt againſt their Commodore, for not diſpoſing of the Prize himſelf in Deſpight of the principal Owners and their Agents.

N°. F.

In this Situation and Finding they could not rely upon any Orders or Inſtructions ſent by Letters, the Agents reſolved to ſend one of their Body to *Lisbon*. On his Arrival Things were found more embroiled then they knew of. It appeared that the Diſapprobation of the Sale of the Quickſilver had not been notified in due Time to the Buyers of it, and the Delivery of it was demanded by Law. There was an Embargo laid on the *Nympha* to hinder her Departure, and a Demand was made for paying to the King 4 *per Cent.* Duty on the whole Cargo. All this ſeemed calculated to force the Agents to a Sale at *Lisbon*. So that the Agent ſent over to get the Prize from thence, after duly weighing all Circumſtances and conſulting with the Engliſh Miniſter, found that there was a Neceſſity to agree, that the Bargain made for the Quickſilver with the Conſent of the Commodore, *&c.* as before mentioned, ſhould ſtand

N°. G.

N°. H.

CASE XVII. N°. I. good for three fourth Parts and together with the other fourth Part should go in the Ship to *London*, paying £. 125 Freight for the same, and in as much as the Agents had made Insurance in *England* upon the whole Cargo and Ship together, and that both were included in one Valuation, it was agreed that the Buyers of the Quicksilver should participate for the Value of 48000 *Millrees* at the Rate of $4\frac{1}{2}$ *per Cent.* Premium in that Insurance and on the same Terms and Conditions as covenanted in the Policies in *London.*

N°. K. N°. L. Thus the *Nympha* having been detained several Months at *Lisbon* against the Will of the Agents, sailed at last in *November* under Convoy for *London.* She arrived safe at *Portsmouth*, but was unfortunately stranded after her Departure thence near *Beachy-head*, to the Consternation of the Insurers, many of whom had underwrote on her for £. 500 and even to £. 1000. They could not be blamed, if they enquired into the Circumstances of this Accident, and if it could be deemed a fair Loss, or if any Body was a Gainer thereby. In some forthwith a Suspicion arose from the Valuation of £. 150000 in the Policies, having heard that the *Spaniards* offered no more than 450000 *Dollars*, or £. 75000 *Sterl.* for this Prize, nor were they acquainted with the Contingencies, relating to the Sale of the Quicksilver, which remained on board, and was included in the Insurance made by the Agents tho' sold.

N°. M. The Opinion of Lawyers being had, many of the Insurers were in great Hopes, on what they said that they should come better of, should they dispute the Valuation by Law; but the *London* Assurance Comp. (who had underwrote a pretty large Sum on this Prize, and who as well in great as in small Concerns adhere to strict Justice, and to fulfill such Terms as they had agreed and in Honour are bound to) had the true State of the Whole cleared up to them, when it appeared,

First, That the Valuation of £. 150000 by the Agents was not made with a View that that whole Valuation was to be insured by them, but, as before mentioned, £. 50000 were for the Sea-men and £. 500 for each Share of such of the Owners as desired it, leaving Room by the above Valuation

Valuation for any of the Share Holders or Seamen, if they had had a Mind to inſure more, to the Sum of £. 150,000. CASE XVII.

Secondly, That as it ſtood in caſe of a total Loſs, it was very clear that the Agents could have recovered no more than £. 105800 inſured at 98 *per Cent.* and it was alſo highly probable, that had the *Nympha* come ſafe, ſhe might have yielded near or above that Sum.

For it was evident by a great Number of Invoices of the Goods found on board, that for what coſt at *Cadiz* 180 Dollars, the *Spaniards*, to re-purchaſe the ſame, did not offer above 100 Dollars. And though it be known, that from the 180 Dollars coſt, *&c.* at *Cadiz*, great Charges muſt be deducted; yet ſtill there was Reaſon to hope the Cargo would yield more at *London* than 450,000 Dollars, which was the Offer made by the *Spaniards*, excluſive of the Quickſilver, which rendered neat at *London* £. 31210 : 6 : 2 beſides 5 $\frac{3}{10}$ *per Cent.* thereof, which was loſt. *See Caſe* XVIII.

Thirdly, That though it ſeemed as if the Officers and Seamen in bringing the *Nympha* from *Portſmouth* had acted careleſsly, yet nothing has been diſcovered, wherein to ſuſpect a Fraud: For it was not found that any particular Inſurance had been made for thoſe Officers; nor had any Thing been concealed by them on the Salvage. A Parcel of Gold which the Captain had taken upon Freight from a Merchant at *Liſbon*, he himſelf ſaved, and gave forthwith an Account of. As for the Agents, there was ſtill leſs Room for any Suſpicion, as each of them had taken a large Riſk in the Policies underwrote in *London*.

Fourthly, That on this Valuation of £. 150,000, it was farther to be obſerved, that though it appeared as if the Inſured, as well Agents, as Owners or Seamen, would reap the Benefit from the Salvage, for ſo much as they had inſured leſs than that Valuation, nevertheleſs the greateſt Part of that ſeeming Profit is ſunk by their being obliged to make good the Quickſilver at the Rate of 3 *s.* 1 $\frac{3}{40}$ *per lb.* as well to the Inſurers as to the Buyers of the $\frac{3}{4}$ thereof, from whom they received for it only after the Rate of 1 *s.* 10 $\frac{1}{3}$ *d.* Moreover, though this Valuation on this Occaſion may turn out beneficial, yet it might have been the contrary. For Inſtance:

CASE XVII. stance: The *Nympha* might have been taken and re-taken in coming from *Lisbon*. To pay the Re-Capture being sold, she produced only - - - £. 120,000

The Re-Captors being intitled to $\frac{1}{8}$, is £. 15000

Whereof there would then have been to be paid, on £. 105800 insured - £. 10580
and on 44200 uninsured, there would have fallen short or lost for the Insured 4420

£. 15000

No. N. Upon these Considerations the *L. A. C.* thought it equitable to adjust and settle this Affair in the following Manner:

The Goods saved, and sold at the first Public Sale which was granted free of Duty, produced nett - -	£. 2735 : 10 : 1
Of the second Public Sale - -	5580 : 5 : 9
Of the third Sale, being the Quicksilver whereon Custom was paid, the Drawback deducted produced nett -	31210 : 6 : 2
	£. 39526 : 2

No. O. Wherefrom are to be deducted the following Charges:

Account of Monies disbursed, on Account of the Wreck of the Nympha.

1747.	To Post-Chaise and Expences to *Birling* - -	£. 1 : 7
	Capt. *Daubuz*, disbursed at the Warehouse -	7 : 11 : 6
	Horses to *Seaford* -	8 :
	Ditto - - -	8 :
	Paid at the *Star* -	10
	The Gunsmith - -	2 : 6

Dec.

CASE XVII.

Dec. 20.	*John Tilford*, and two more for Salvage - -	1 :	8	
	Two more ditto -	1 :	8	
	George Upton, for Meſſages		11	
	Mr. *Young*, waſhing ſome of the Linnen - -		6	
	Salvage paid 40 Men at *Seaford*	25		
	Gunpowder for the Battery	2 :	5	
26.	Horſe and Man, to carry the Powder in the Night -		6	
	A Man to go Expreſs to *London*	1 :	5	
26.	*Robinſon*'s Charges -	3 :	3	
27.	*G. Apled*, for Meſſages -		2 :	6
	Walſon 7s. and *Palmer* 5s. -		12	
	Horſe to *Crowlink* -		3	
30.	Ditto to carry down ſome Muſquets to the Battery -		7	
	Horſes - -		13	
Jan. 4.	More Charges to *Robinſon*	5 :	5	
	Man to *Crowlink* -		3	
	Ditto - -		2	
	Woman, that recovered a Piece of Linnen before Major *Beard*	1 :	1	
9.	The Boats at *Seaford* -	56 :	10	
13.	*Joſ. Moſely*, for the Hire of his Horſe for the Officers	1 :	2	
14.	Mr. *Glover*, what he paid the *Seaford* Boats -	10		
16.	*John Willard*, towards his Bill	15 :	15	
17.	*Seaford* Boats -	48 :	2 :	6
18.	*Newell*, for Horſe-hire	1 :	6	
	Mr. *Brooker* -		10 :	4
	Bill for the Officers at the Tree	4 :	15 :	6
	Mr. *Glover* for his Diſburſements	4 :	6	
	The Comptroller of *Newhaven*, for waſhing, *&c.* he paid	2 :	2	
23.	A Woman for waſhing		2 :	6
	John Heatty, for a Man	1 :	19 :	6
	Saunders for Boat-hire	18 :	14	

Expences

CASE XVII.

25.	Expences, *Swain*, at the Tree	£.1 : 4	
	Boats and 36 Men this laſt Week	36 : 12	
	Expences at *Brocker*'s -	10 : 4	
	Thomas Foſter, making a Pair of Tongs - -	9 : 8	
	Charges paid *John Kerly* -	5	
27.	*Osborne*, for Things for the Stable	2 : 11	
	Glover, for what he diſburſed	17	
	Rabſon, for Tongs -	2	2
	Skinner, for Horſe-hire -	5	
Feb. 9.	Dr. *Campbell*, Diſburſements	5 : 3	
	Cheeſe - -	3 : 7	
Jan. 29.	Another Pair of Tongs -	16 : 6	
	Holt, for Sticks to put in the Tongs - -	4	
	Weller, for Waggons to *Crowlink*	3 : 3	
30.	*Foſter*, another Pair of Tongs	17 : 6	
	Peirce, for Waggons -	11 : 16	
	Hollands, ditto -	6 : 17	
31.	*Swain* - -	2 : 7 : 11	
	Seaford Boats -	18	
	Horſe-hire - -	7 : 7	
	Expences at *Brighthelmſtone*	12	
	John Kerly, for Diſburſements	1	
Feb. 2.	*Kemp*, at the *Bear* -	4 : 8 : 8	
	Boats at *Seaford* -	27	
	Carriage to ditto to *Newhaven*	2 : 5	
	Swaine - -	1 : 14 : 9	
	Help about the Cable -	8	
	Marolum's Bill, regarding the Wreck, for his Diſburſements	4 : 1	
	N. Anſel, for Beef for the Battery	16 : 3	
	Furlong's Diſburſements	3 : 2	
	Ann Douglaſs, for Labour	1 : 11 : 6	
	Burringer, for Diſburſements for the Houſe -	7 : 2 : 1	
6.	*Ja. Weſton* - -	13	
13.	*Foſter*, making another Pair of Tongs -	18 : 6	

Ditto

CASE XVII.

		£.		
	Ditto -		16 :	9
14.	Boats to *Seaford* - -	37 :	16	
	Swaine's Bill - -	1 :	12 :	6
	Carriage to *Newhaven*	6 :	12	
	A Reward for finding the Bottom	2 :	2	
	Sundry, for Houſe-hire	6 :	6	
	Ditto - - -	5 :	5	
	According to Promiſe to the Boats for their Encouragement, for getting 1405 Boxes Quickſilver, given them -	2 :	2	
	John Kerly, for Diſburſements	1 :	1	
	Cripp's Bill at the *Star*	24 :	1	
	Roſſe, the Carpenter, Poſt-Boxes	17 :	5	
	Capt. *Brooker*'s Bill at *Newhaven*	18 :	17	
20.	Mr. *Stamper*'s Bill -	14 :	14	
	Mr. *Nichols*'s Bill -	1 :	11 :	6
	For Poles - -		4	
	Capt. *Johnſon*'s Bill -	11 :	1 :	8
	Capt. *Stamper*'s Diſburſements for waſhing, as *per* Account at large -	153 :	14 :	7
27.	Some Fowls -		2	
	Willar, for Waggons -	2 :	2	
28.	Boats at *Seaford* -	6 :	6	
	People to drink -		5	
	Each Boat a Bottle of Brandy -		6	
	Carriage to *Newhaven* -		18	
	Swain, at *Seaford* -		16	
29.	*Jenner*, the Box-maker -	6 :	9	
	Smith, for a Horſe -		9 :	6
	C. Cooper, towards 2 S. Keggs	15		
	J. Tarrant, for Brandy for the Boats - -	2 :	2	
	G. Upton - -		5 :	6
	Poſt-Maſter for 2 Expreſſes	1 :	10	
	Mr. *Britt*'s Bill -	1 :	3 :	10
	Mr. *Willard* more his Bill	15 :	1 :	6

CASE XVII.

		£.		
	Mr. *Mollineux*'s Bill		3 :	9
	Mr. *Stevens* -		2 :	2
	The Smith at *Birling* mending the Tongs -		3 : 6 :	6
	Sundry ſmall Memorandums		1 : 0 :	3
	Mr. *Edwards*'s Diſburſements and Horſe-hire -		4 : 18	
	Butcher Virgoe's Bill for the Houſe		2 : 4 :	7
March 7.	Mr. *Barringer*'s Bill for the Houſe		6	
	Moore, the Cooper, for Keggs		7 : 16	
14.	*Seaford* Boats -		14 : 14	
	Root, for 2 S. Boxes more		2 : 14	
	Turner, the Cooper -		19	
	Lambert, for Cordage for 2 S. and Bale Goods - -		5 : 6	
18.	*Hollands* for Waggons -		1 : 2	
	Pearce, for ditto -		3 : 13 :	6
	Mr. *Hunter*, for brazen Caniſters		3 :	6
	Dutton, the Carpenter's Bill, for cutting up the Decks to get the Bales out, and building the Houſe on the Battery		25 : 1	
21.	*Seaford* Boats -		9 : 9 :	6
	The Stationer - -		13	
	Capt. *Durell*, paid for Horſe-ſhoes		3 :	3
	William Durrant, for Waggons		3 : 7	
	William Ruſſell, on the Wreck		1 : 12	
22.	*Edward Davis*, for Fiſh -		14	
	Thomas Holt, for Poles -		2	
	Waller, for bringing Wood		4	
	For a Coffin for the Doctor, as Mr. *Whitfield* ſaid -		1 : 9	
	Mr. *Bean*, for Lighters, *&c.*		1 : 5	
	Swain's Bill at the Tree -		1 : 16	
	Waller, for Waggons on the Wreck -		3 : 7	
	George Sandall, Cooper -		7 : 2 :	6
	Collector of the Cuſtoms for Harbour Dues for the 2 Sloops Cargoes -		5 : 4 :	6

Farmers

CASE XVII.

23. *Farmers at* Seaford, *viz.*

	£.		
James Saunders -	12	12	
John Bean - -	4	4	
William Raje -	8	8	
John Latter -	4	14	6
George Stevens, *Thomas Stevens*, and *Thomas Meggot* -	6	6	
Henry Bean -	2	5	
Robert Parmer -	16	7	
John Townſett -	2	2	
Robert Bean -	2	15	
Edward Auger -	2	2	
James Dupree -	88	6	6
William Standford -	16	5	
John Osbourn -	5	14	
James Chambers -	28	13	6
George Allfrey - -	22	18	
Thomas Cooper -	10	18	
Thomas Cooper for Brothers	3	7	
Thomas Swain -	2	2	
John Waſker - -	12	11	6

1748.
25. Captain *Diplock*, Captain of the Cuſtom-Houſe Yacht, for Self and Men at the Warehouſe 28 : 12

Henry Merchant, for Teams 5 : 15 : 6

Nicholas Allen, ditto - 2 : 2

Medley, Eſqr's Man - 2 : 2

Mr. *Fletcher*, Teams as *per* Bill 43 : 7

Collector at *Newhaven*, as *per* Bill 41 : 16

Charles Harriſon, Surveyor of the Riding-Officers - 102 : 14

Joſ. Parmer, for a Team from the Wreck - 2 : 2

27. *Seaford* Boats - 15 : 15

28. *Tickner* the Officer, for going to *London* with the Waggons 2 : 2

CASE XVII.

	A Man to carry Books to *Crowlink*		6
	A Baſket for the Caniſters of Nutt Oil - -		8
	Abraham Edwards, Officer, as *per* Bill - -	22 :	6
	Dan. Skinner, ditto -	16 :	6
	Waſhing the laſt Sheeting -		3
	Criſps, for the Farmers, when adjuſted -	2 :	3 : 4
	Capt. *Johnſon*, what he diſburſed at *Crowlink* -	4 :	17 : 2
	My Diſburſements with Officers, ſetting the two Sloops Journey to *London* and back	4 :	2 : 9
	Smith, the Officer, going to *London* with Goods -	2 :	2
	Capt. *Hadley*, a Sloop, fetching the 2 S. into the Harbour	12 :	5
	Brooker's Bill for Charges	8 :	: 6
	Capt. *Freebairn*'s Charges	2 :	3
	Brooker for piloting the *George* Dogger in and out -		13 : 6
	John Kerly, ſundry Diſburſements	2 :	17 : 3
	John Wood, for Skins to the 2 S.		14
	Charles Cooper's Bill for coopering the Brandy and Wine, when went away with *Latten*	3 :	2
	Cheſter, for drying Pepper, Citron, and ſmall Beer -	3	
	Cheſter, for ſmall Beer at the Battery, after the Privateer was out of Pay. - -	1 :	5 : 3
30.	*Stamper*'s Bill, for what he ſupplied the Houſe -	2 :	5 : 3
	Virgo, the Butcher, for the Houſe	2 :	15 : 8
	Ditto, for the Battery, after the Privateer was out of Pay	3 :	7 : 4

Ditto,

CASE XVII.

	Ditto a Haunch Pork for the House		4 : 2	
	Ditto, a Horse and Man twice for the Battery - -		11 : 6	
	John Kerby, from the 13th *Jan.* to the 9th of *April* -	8 : 18		
	Cardin and *Jarvis*, the Balance of their Account -	9 : 2		
	James Husland, from the 25th of *Jan.* to the 9th of *April*, 77 Days, at 2*s.* -	7 : 14		
April 1.	*Charles Douglas*, from the 2d of *March* to the 9th of *April*, 38 Days, at 1*s.* 6*d.* -	2 : 17		
	Two Horses from *Pool*, *Jan.* 13 to the 9th of *April*, 89 Days, a 1*s.* each -	8 : 18		
2.	Doctor *Manning*, for old *Jones* about the Cloths -	1 : 1		
	Horse-hire to *Crowlink* -		6	
	Samuel Young, for fetching the 5 Guns and 20 Tons Iron, and putting on board old *Sweethland*	1 : 17 : 9		
3.	*Weller*, for Carriage -	2 : 4		
	Peirce - -		8	
	Mr. *Thomas Friend*'s Bill	21 : 17		
	Seaford Boats -	21 : 5		
	Mr. *Harrison*, *Tho. Newington*, Officers, going to *London*	2 : 2		
	Swain, at the Tree -	1 : 8		
	John Willward, for the Officers lodging in the House	65 : 3		
	Rolfe, for more Boxes -		6	
	Mills, at *Birling*, for lodging the People that worked -	6		
	Richard Mills, for Men			
	Price at *Birling* -		11 : 6	
	Holland's Carriage -		18	
	Mr. *Brooker*, £. 1 : 15 and 4*s.* 6*d.*	1 : 19 : 6		
	The Sadler - -		7 : 6	

The

CASE XVII.

	The Poſtmaſter for Expreſſes, *&c.*	2	13	6
	Hollands for Waggons -	2	8	
	Barringer for Work -		13	6
	Cripps for Oats - - -		6	2
	A. Edwards for Horſehire -	2	14	6
	John Edwards, ditto -		14	10
	Mr. *Barringer* for the Houſe	8	16	6
	Charges at *Grimſtead* -		17	
	Poſt-chaiſe at *Godſtone* -		18	6
	at the *Parrot* - -		13	6
	Officers I ſent for, and detained to aſſiſt on the Salvage :			
	Capt. *Johnſon* who I appointed Foreman to manage at *Crowlink* from *Dec.* 10 to *April* 6, at 10 *Sh. per* Day -	59	10	
	Lieut. *Fullerton*, from *Dec.* 2 to *March* 8, 96 Days, a 5 *Sh.*	24		
	Lieut. *Furlong*, ditto -	24		
	Capt. *Macolum*, ditto -	24		
	Capt. *Durel*, and Expences to and from *Pool* - -	25		
	Capt. *Freebairn*, from *March* 12 to *April* 6, 25 Days, a 5 *Sh.* after the Privateer was out of Pay - - -	6	5	
	Six Men at the Battery ſince ditto	17	11	4
	Scarding and *Jarvis*, for Cellar, Boards, Lighter, Waſhing, *&c.*	20		
	Mr. *Edwards* more -	1	1	
	A Man at *Grinſtead*, *James Batchelor*, by Order of *N.* paid to *Thomas Swain* -	3	6	4
	A Horſe that was killed	10		
	John Kerby and Capt. *Freebairn*, ſmall Diſburſements -	1	2	6
28.	My Expences in *London*, ſitting with the Waggoners, maintaining Horſes, paid Wiſher	9	14	6

John

CASE XVII.

John Kerby - -	1	18		
Ditto, he diſburſed on the Wreck	17	3		
John Whitfield for Diſburſement paid by him to the Salvors	308	6	8	
Headly, Boat hire -	11	2		
Capt. *Stamper*, attending on the Wreck, and recovering Goods from the Country -	42			
Mr. *Belchier*'s Expences in Horſe-hire, two Servants, and maintaining 150 Soldiers 3 Days	68	8		
Robinſon's Attendance -	10	10		
Sam. Belchier's Attendance	21			
Two Sloops coming from *Pool* to *Newhaven*, and taking Wreck-Goods for *London* -	138	7		
the *George Dogger* from *December* 3 to *March* 3, 3¼ Months, to guard the Privateers, and convoy the Sloops to the *Downs*	550			N°. P.
Edwards, more for Boats &c. on the Wreck - -	11	2		
Sundry Officers attending the Waggoners in *London*	10	10		
Myſelf acting and diſpoſing for the Managers, 150 Days, agreed at £. 5 *per Diem* -	750			N°. Q.
Hoſkins's Waggon, *per* Bill	28			
Clark's ditto - -	26	1	6	
Cole's ditto - -	22	9	5	
Marchant and *Vinal* to Mr. *Hoſkins* - -	15	13	11	
Hoſkins, for *Wickerſon*, *Batchelor*, *Martin* and Comp.	31	15	3	
Ditto, for *Wilbar* -	14	14		
Ditto, for *Pearce* -	4	2		
Mr. *Davis* - -	69			
Mr. *Hoſkins* - -	22	11	6	
Durant - -	10			

Portugueſe

CASE XVII.

N°. R.	*Portugueſe* and *Italian* Sailors in Conſideration of the Salvage and Wages -	277 : 5	
	John d'Acoſta, Interpreter	10 : 5	
N°. S.	Fifty *Engliſh* Sailors, hired at *Lisbon*, for bringing the *Nympha* - -	432 : 16 :	6
	William Knight going twice to the Wreck - -	10 : 10	
	George Taylor, for Salvage of Goods - -	2 : 13	
	Nicholas Furlong coming round with the Sloop -	3 : 13 :	6
	Gaſ. Beard, Cuſtom-houſe Officer for Attending -	3 : 3	
	Sundry Sailors travelling Charges from *Pool* - -	3 : 6	
	Two more Sailors Wages paid	13 : 10	
	Two Packers, for going down to *Lewes* to ſort, dry and pack the Goods - -	108 : 18	
	Inſurance from *Lewes* to *London* on £. 9100 -	271 : 18 :	6
	Charles Roger's Account of Charges in *London* -	1231 : 8 :	9
N°. T.	The Managers for directing the Salvage, Mr. *Belchier*'s and Mr. *Talbot*'s perſonal going, and making the proper Diſpoſitions, and for our Commiſſion on the Sale of the Goods, valued at £. 44057 : 2 : 2 *d.* a 5 *per Cent.* - -	2202 : 17 :	1
		£. 8596 : 9 :	11

It

CASE XVII.

It was then judged reaſonable, that the following Articles ſhould be moderated:

£. 550	For an armed Veſſel to guard the Wreck, 3¼ Months.	N°. P.
750	For Mr. *Tito*'s Direction on Behalf of the Agents, 150 Days, at £. 5 *per Day.*	Q.
277 : 5	Paid for Wages to the *Portugueſe* and *Italian* Sailors.	R.
432 : 16 : 6	For Wages to 50 *Engliſh* Sailors.	S.
2202 : 17 : 1	The Commiſſion of the Agents upon the Amount of the publick Sale being together £. 44057 : 7 : 2 at 5 *per Cent.*	T.
£. 4212 : 18 : 7		

Upon the Whole it was agreed, that from theſe £. 8596 : 9 : 11 ſhould be an Abatement of £. 1988 : 11, there remain for Charges - - - £. 6607 : 18 : 11

So that the Loſs was adjuſted in the following Manner:

The Valuation - -		£. 150000
Goods ſaved ſold for	£. 39526 : 2	
Deduct for Charges above	6607 : 18 : 1	
		32918 : 3 : 11
The whole Loſs is		£. 117081 : 16 : 1

Which Sum being to be paid upon £. 150000 at 98 *per Cent.* makes 76½ *per Cent.* Loſs. And thus this grand Affair was adjuſted by the L. A. C°.; whereto all the other Inſurers in *London*, *Briſtol* and *Exeter* acquieſced, without engaging in any Suit at Law: Very greatly redounding to the Honour of the Inſurers in *England.* N°. U.

CASE XVIII.

CASE XVIII.

Shewing how and upon what Value the Buyers of the $\frac{3}{4}$ of the Quicksilver in the Nympha *mentioned in the foregoing Case, ought to contribute to the Salvage.*

IN the preceeding *Case* it is set forth, that the Agent who went to *Lisbon*, was obliged to consent to allow the conditional Sale of $\frac{3}{4}$ of the Quicksilver to stand good; he agreed that all the Quicksilver should remain on board, and proceed in the *Nympha* to *London*, and as the whole Cargo was insured in *England*, and a joint Valuation had been made of it in all the Policies, he signed a Paper, by which he made himself answerable to the Buyers of the Quicksilver, for the Sum of 48000m *Rees* Insurance a $4\frac{1}{2}$ *per Cent.* on the Terms as expressed in their Policies in *England.*

N°. A. Now as most of the Quicksilver was saved and being worth at *London* a much higher Price, then insured and paid for it at *Lisbon*, and the Buyers Insurance making only a Part of the whole Cargo and the Ship insured and valued together, and in all Policies expressed alike, it seems to be doubtful whether under the Conditions agreed to at *Lisbon* by the Agent for the Privateer, the Buyers of the Quicksilver were to be considered in any other

N°. B. Light, than as claiming under an Assignment for the 48000 *Mill Rees* to be taken from the whole Insurance in general? Some Lawyers were of Opinion, that the $\frac{3}{4}$ Parts of the Quick-

N°. C. silver saved should not be delivered to the Assigns of the Buyers who much alarmed thereat, demanded the same by Law. As the settling of the Insurance in general depended on the publick

N°. D. Sale of all that was saved, a Person interveened as Mediator, and it was agreed by both Parties, that a publick Sale should be made of all the Quicksilver, and their Difference left to Arbitration. The publick Sale being made, Arbitrators were fixed

N°. E. upon; Mr. *B. B.* for the Buyers of the Quicksilver, Mr. *N. M.* for the Concerneds in the Prize, Mr. *P. T.* as umpire, who did not think themselves obliged to enter into any Discussion about the

the Validity of that Bargain, ſince the Parties had admitted thereof at *Lisbon:* But the Matters to be weighed and conſidered were CASE XVIII.

Firſt, The Account of Salvage Charges, delivered by the Agents, whether overcharged, or not? N°. F.

Secondly, On what Value a Repartition of thoſe Charges was to be made: and how much the Agents as their Inſurers for 48000 *Mill Rees* ought to bear: and what the Buyers themſelves ought to bear? N°. G.

As to the *firſt* Point. The Arbitrators were of Opinion, that no more than 4 *per C.* in the Whole ought to be allowed on the Sale of what was ſaved out of the *Nympha* inſtead of £. 750, for £. 5 a Day to Mr. *Tito* and £. 2202, for the Agents Commiſſion at 5 *per Cent.* which 4 *per Cent.* make - £. 1762 N°. H.

That by allowing the Seamen £. 709, as paſſed in the Account, the Agents had been too liberal to them, for no more than their Share of £. 33000 net ſaved ſhould have been made them good, and as £. 33000 ſaved on £. 150000 the Valuation, makes 22 *per Cent.* on £. 709, it ought to be but £. 156

Further for extraordinary Aid of theſe Seamen the Arbitrators allowed - 164

320

Thus from the Account as delivered by the Agents amounting to - £. 8596 : 19

£. 750, £. 2202 : 17 and £. 709 being deducted } is 3661 : 17

Remains to be added to the above Sum - 4935 : 2

So in the Whole allowed for the Charges of Salvage and Commiſſion - - 7017 : 2

Which is £. 409 : 2 more than had been admitted by the Inſurers: For from £. 8596 : 19 they deducted £. 1988 : 11, and there remained £. 6607 : 18, whereunto being added £. 409 : 2 makes £. 7017 : 2, as above.

CASE XVIII. N°. I.

As to the *ſecond* Head. It was very evident, that had not the Quickſilver been ſaved, the Buyers could not have been benefited by the Price it ſold at in *London*: they would have received for the 48000 *Mill Rees* aſſigned them in the Aſſurance at *5s. 6d.* £. 13200 leſs 2 *per Cent.* - £. 12936

Now the $\frac{3}{4}$ ſaved produced in *London*, the Duties deducted - - - 23407 : 15

From whence being deducted the above Sum of £. 12936 it is very plain theſe Buyers ought to bear a Proportion of the Charges of Salvage on £. 10571 : 15 inſured.

To prove and illuſtrate this Point, *N. M.* produced a parallel Caſe adjuſted and ſettled with the *L. A.* C°. and the *R. E.* C°. (being the next following) and divers others from *Lisbon* and other Parts, inſerted in this Work.

N°. K.

Some little Difference between the Parties with Regard to the Reduction of the Weight was then diſcuſſed. That is to ſay, on how much the Buyers ought to pay at the Price bought at *Lisbon*. Two different Accounts were produced as follows.

1467 Cheſts at 153 lb. neat render in *London* 224451 lb. and as lb. 112 in *London* make lb. 100 at *Lisbon*, it would make of *Lisbon* lb. 220443.

$\frac{3}{4}$ whereof being lb. 165332, at 300 *Reis per lb.* is - - - *Reis* 49599m600

Inſurance for 48000 *Millreis*, at $4\frac{1}{5}$ *per Cent.* 2016m000

Duties at *Lisbon* at 200 *Reis per lb.* at 4 *per Cent.* - - - 1322m650

52938m256

Which at *5s. 6d.* make the Demand of the Seller to be £. 14558 : 1

The

CASE XVIII.

The other Account.

1467 Cheſts at 151½ lb. in *London* make lb. 222250½, and as 102½ in *London* make 100 at *Lisbon*, the Whole would produce lb. 216830.

¾ whereof make lb. 162622, at 300 *Reis*	*Reis*	48786m600
Inſurance as above - -		2016m000
Duties at 200 *Reis* at 4 *per Cent.* -		1300m976
		52103m576

At 5*s.* 6*d.* the Buyers Account amount to £. 14328 : 19.

The Arbitrators taking the Medium of both Sums, *viz.*

£. 14558 : 1 and £. 14328 : 19 awarded that the Buyers ſhould pay -	£.	14443
As in *Lisbon* they had paid 44720 *Millreis* on Account, at 5*s.* 6*d.* there muſt be deducted - - -		12298
Remain due	£.	2145

N°. L.

The Account therefore between the Parties was thus ſtated and ſettled:

The

CASE XVIII.

The Buyers of the Quicksilver.

Drs.		Crs.	
To ballance due as above	£. 2145	By $\frac{3}{4}$ of the Sale of all the Quicksilver, the Whole being £. 35522: 5: 2	
To 104 Lots of Quicksilver bought for their Account out of the publick Sale	26355: 3: 5	Deduct for Duties	4311: 19
To Salvage on £. 23407: 14: 8, at $17\frac{3}{4}$ *per Cent.*	4154: 17: 6		£. 31210: 6: 2
	£. 32655: :11	Of which $\frac{3}{4}$ amounts to -	£. 23407: 14: 8
The Arbitrators awarded to repay to the Buyers in *London* for Balance -	826: 8: 7	By Lot Money paid	1092
		Insurance of 48000 *Millreis* at 55 6*d.* to pay 98 *per C.* is £. 12936 $17\frac{3}{4}$ *per Cent.* Salvage Charges to be made good thereon	2296: 2:10
		Moreover Deficiency on Quicksilver not saved at $5\frac{3}{10}$ *per Cent.* on the said £. 12936 insured 685: 12	2981: 14: 10
		By Cash paid by the Buyers to the Agents in *London*	6000
	£. 33481: 9: 6		£. 33481: 9: 6

To

CASE XVIII. N°. M.

To explain and illuſtrate the above Account, it will be proper to make out, in what Manner the Computation was made ſo as to fix the $5\frac{3}{10}$ *per Cent.* for Deficiency of Quickſilver.

If all the 1467 Cheſts had arrived ſafe in *London*, they would have weighed at 153 lb. each	- - -	*lb.* 224451
Deduct 5 lb. a Cheſt as was done at the publick Sale	- - -	7335
		lb. 217116
Tret 4 *per Cent.*	- - -	8350½
	Net	*lb.* 208765½

Now the Whole that was ſold at the publick Sales was	- - - -	*lb.* 197701
So there was wanting	-	*lb.* 11064½

which being loſt on lb. 208765½ lb. comes out at $5\frac{3}{10}$ on every £. 100.

The whole Amount of the Sale of the Goods ſaved, deducting the Duties, was - - £. 39526 : 2

The Arbitrators allowed as above for Charges of Salvage £. 7017, which make - - $17\frac{3}{4}$ *per Cent.*

Thus the Sellers or Agents ought to pay to the Buyers as agreeing to inſure to them 48000 *Millreis*, or £. 12936, as explained above

For Charges of Salvage	- -	$17\frac{3}{4}$ *per Cent.*
And for Want, or Deficiency, or Quickſilver loſt	- - -	$5\frac{3}{10}$
	In all	$23\frac{2}{40}$ *per Cent.*

And thoſe Sellers or Agents ought to receive from the Buyers the Salvage Charges on the Value of £. 23407 : 14 : 8, at $17\frac{3}{4}$ *per Cent.* being $\frac{3}{4}$ of the Produce of the Sale of the Quickſilver.

It

CASE XVIII. N°. N. It may farther be obſerved, that the Buyers of the Quickſilver in Strictneſs ought to have been charged with a proportional Part of £. 125, which was the Freight agreed on. For that Sum *N.M.* demanded £. 96: 3: 6. (*See Caſe* XXIX.) Further to have been thoroughly exact, the £ 685: 12 allowed for loſt Quickſilver, ſhould have been deducted from £. 12936, the Sum inſured to the Buyers, and only 17 ¾ *per Cent.* for Charges of Salvage, demanded on £. 12250: 8.—But as 8 Cheſts more of Quickſilver were ſaved not comprehended in the above Account, and there was ſtill a Chance that ſomething more might be found, which Chance and the above Cheſts being given up the Sellers, *N.M.* deſiſted from the above ſmall Demand, and the Buyers of the Quickſilver, without Law-ſuit or Vexation, recovered for ¾ of the Quickſilver ſold - - £. 23407 : 15

For 17 ¾ *per Cent.* Charges of Salvage 5 $\frac{3}{10}$ *per Cent.* for Deficiency on £. 12936 inſured -	2981 : 14 : 10
	£. 26389 : 9 : 10
Deducting on £. 23407 : 15 at 17 ¾ *per Cent.* for Charges of Salvage -	4157 : 17 : 6
	£. 22231 : 12 : 4
at *Lisbon* it coſt them -	14443
Remains clear Profit	£. 7788 : 12 : 4

N°. O. Now though it be evident that the Buyers of the Quickſilver made ſo great a Profit, yet the Concerneds in the Prize were almoſt equally benefited by their Agent's having aſſigned to thoſe Buyers the Inſurance of £. 12936; for hereby they paid on £. 12936, only 22 $\frac{1}{10}$ *per Ct.* for Loſs and Salvage; whereas the Inſurers paid them 76 $\frac{1}{2}$ *per Ct.* (*See Caſe* XVII. N°. U.) Had no ſuch Aſſignment been made, then there only could have been a Return of Premium of 4 *per Cent.* on that Sum of £. 12936 to the Agents. Still the Inſurers in *London* were neither prejudiced by this Aſſignment, ſince the whole Produce of the Quickſilver was made good to them at the Price it ſold at *London*, and thus paid ſo much leſs Loſs to the Inſured, as it yielded Profit to the Buyers.

N°. P.

Buyers. We will endeavour to illuſtrate this Matter and prove it: Suppoſe no Aſſignment of Inſurance had been made on the $\frac{3}{4}$ Part of the Quickſilver bought at *Lisbon*, moreover that by Litigation the Valuation of the Prize and Cargo at £.150000 could have been ſet aſide. Then let us ſtate the Caſe to ſee whether Ship and argo were worth the Sum inſured. And firſt we muſt obſerve that £. 105800 inſured at 98 *per Cent.* produce - - £. 103684

CASE XVIII.

Deduct $\frac{3}{4}$ of the Quickſilver, as bought in *Lisbon*, on which the Premium to be returned -	*L.* 14443	
Leſs 2016 *Mill. Reis* Premium a $\frac{1}{5}$ *per Cent.* -	554	
		13889
Remain -		*L.* 89795

which is the Sum the Inſurers would have been anſwerable for.

N°. Q.

Now as to the Worth of the Prize:

The *Spaniards* at *Lisbon* having offered 450000 Dollars for her, at 6 Dollars for a Pound Sterling, is	75000
For Duty and Charges at *Lisbon*, at leaſt 10 *per Cent.* muſt be added, is ..	7500
Theſe two Sums make *L.* 82500 to inſure, which at 4 $\frac{1}{2}$ *per Cent.* Premium to receive 98 *per Cent.* there could have been *L.* 88235 inſured	3970
$\frac{1}{4}$ Part of the Quickſilver being lb. 52194. which was known to be worth in *London* 3 *s.* *per lb.* there could have been inſured	7286
Makes in all -	*L.* 93756
Deduct for 6 Shares, on which no Inſurance was to be made, or $\frac{1}{40}$ Part of the Whole	2344
	L. 91412

CASE XVIII.

L. 8315 is the Produce of the Goods saved.
7286 $\frac{1}{4}$ Part of the Quicksilver insured for that Sum.
To be deducted

L. 15601 { *L.* 2769 for Charges of Salvage at 17 $\frac{3}{4}$ *per cent.*
3089 { 320 for $\frac{1}{40}$ of *L.* 12832, the Net of the Goods and Quicksilver.

L. 12512 deducted from £. 91412.

So the Loss on *L.* 103684, is - 78900
and Premium to be returned on *L.* 12272, being the Difference from *L.* 103684 insured to *L.* 91412, the above stated Worth of the Price at 4 *per Cent.* - 490

Which make together - *L.* 79390

Which on *L.* 103684 to pay 98 *per Cent.* } makes 75 $\frac{40}{583}$ *per*
or on *L.* 105800 to pay 100 *per Cent.* } *Cent.* in the Whole.
instead of 76 $\frac{1}{2}$ *per Cent.* at which it was adjusted.

N°. R.

And should the Insurers have gone to Law; the Captors, by Invoices found on board the Prize, could easily have proved that the Price offered by the *Spaniards* was in reality much less than the Goods were bought for, at the Place where they were fabricated: so that those Invoices would have sufficiently convinced any Jury that a greater Sum than the £. 91412 abovementioned, and might perhaps have allowed for the Value of the Prize 1 or 2 *per Cent.* more than what was awarded to recover from the Insurers. But, with great Submission to the Gentlemen of the Law, we imagine it would have been no easy Task to have made them comprehend the whole Connexion of this Matter: Though to Merchants, who may be at the Pains to examine those Accounts, it will plainly and fully appear that no Party has been prejudiced thereby. And so it often happens that for Want of carefully examining and weighing our own Concerns, Disputes at Law arise, which when cleared up are found not to have been worth disputing.

CASE

CASE XIX.

CASE XIX.

Shewing in what Manner the Owners of Goods contributed to the Charges of Salvage on the Amount of their Value at Cape Francois, *or at the Place where they were landed, more than the Sum insured on them.*

ON the 26th of *June*, 1744, Messrs. *S---s* in *London*, made an Insurance with the *London Assurance* Comp. for Account of *R---d V---e* at *Bourdeaux*, of *L.* 1000, *viz.*

£. 600 upon ¼ Part of the Ship *l'Orphee*, which was valued at the Sum insured.
400 upon ¼ Part of the Cargo, being bound from *Bordeaux* to *Cape Francois*.

Not far distant from the last-mentioned Place this Ship was chaced a-shore by an *English* Privateer, and several of the Goods plundered; the first Cost whereof, according to the Account delivered, amounted to 12477 Livres, 16 Sols, 11 d. and was included in the whole Cargo, which said Messrs. *S---s* valued at Liv. 31675 : 12 : 9 d. consequently *V---*'s ¼ Part Liv. 7918 : 18 : 3 d. a 33 d. - - *l.* 362 : 19 : 1
Premium a 15 *per Cent.* - 54 : 9
l. 417 : 8 : 1 N°. A.

and ¼ of what was plundered 3119 Liv. 9 : 3 a 32½ d. - - *l.* 140 : 16 : 2
Premium a 15 *per Cent.* - 21 : 2 : 4
l. 161 : 18 : 6
Commission of the Assurance ½ *per Cent.* 16 : 2
Loss - *l.* 162 : 14 : 8

CASE XIX. the Ship valued at *l.* 2400 *Sterl.*
at 32 ½ d. Liv. 53169 : 4 : 6
being damaged ſhe was ſold at *Cape Francois* for Liv. 16510
deduct for Difference in the Money 25 *per Cent.* 4127 : 10
12382 : 10
Liv. 40786 : 14 : 6
whereof the ¼ Part Liv. 10196 : 13 : 7
at d. 32 ½, the Loſs is - £. 460 : 3 : 9

Paid in all for Charges of Salvage upon the Ship and Cargo, as by the Account - Liv. 17302 : 16 : 4
whereof they deducted ⅛ 2162 : 17
Liv. 15140
and for Difference in the Money - 3785
Liv. 11355
is for ¼ Liv. 2838 : 15 a d 32 ½ Loſs - - L. 128 : 2 : 9
L. 751 : 1 : 2

N°. B. Which Sum Meſſrs. *S---s* demanded from the ſaid Company; to which it was objected: That granting the Amount of the
N. C. firſt Coſt of the Goods plundered to be right at Liv. 12477: 16 : 11, yet it appeared from the Certificate of the Goods ſaved and ſold at *Cape Francois*, that they did produce 55620 Livres, and conſequently much more than the whole Cargo had coſt: And although they did not pretend to any Share in that Profit, yet the Company were of Opinion that the Proprietors of thoſe Goods ought to contribute towards the Charges of Salvage for ſo much as they had rendered more than the Sum inſured on them.

The Company therefore made up the Account in the following Manner:

Goods

CASE XIX. N°. D.

Goods saved.	sold for.	cost.
49 Casks with Bacon	*Liv.* 2017	*Liv.* 781 : 1 : 6
131 red Wine } 5 filled up }	25798 : 13 : 8	6130 : 11 : 7
28 white Wine } 1½ filled up }	1948 : 2 : 9½	480 : 3
85 pickled Meat	4745	3407 : 16
13 Potts Butter -	441	180 : 14 : 4
2 Casks Nails -	445	171
25 Bundles Pipe-staves	480	137 : 8
3 Casks Tallow -	230	82 : 15
2 Ditto Pitch -	600	50
3 Ditto Vinegar -	49	15 : 6 : 6
321 Ditto Flour -	17271	6855 : 6 : 3
6 Ditto Oatmeal	971	417 : 15 : 6
3 Ditto Brandy -	60	27 : 5 : 8
24 Deals -	100	107 : 5
7 Casks Leaden Bullets	465	243 : 7
	Liv. 55620	Liv. 19089 : 2 : 4
the Ship	16510	
	Liv. 72130	

For Premium of Liv. 23138, a 15½ *per Cent.* to pay 98 *per Cent.* 3586

22675 : 2 : 4

for Difference in the Money 25 *per Cent.* 7525

The Cost at *Cape Francois* - Liv. 30200

Upon the abovementioned Produce at the Sale of 72130 Liv. were to be divided the Charges of Salvage, being - - Liv. 17302

and to deduct ¼ instead of ⅛, as by the Account Messrs. *S---s* had formed - 4325

Liv. 12977

Which

CASE XIX. Which borne by the following Particulars, make

N°. E.

For Liv. 30200, the Cost of the Goods with the Premium -		Liv. 5433
16510, the Sale of the Ship -		2971
25420, Profit upon the Goods -		4573
Liv. 72130		Liv. 12977

And the Loss wherewith the Insurers were chargeable amounted to as follows, *viz.*

The whole Cargo cost -		Liv. 31675 : 12 : 9
Premium of 38394 Livres a 15 ½ *per Cent.* - - -		5951 3
		Liv. 37626 : 13
The whole Loss -	Liv. 12477 : 17	
Premium of 15124 Liv. at 15 ½ *per Cent.* -	2344 : 3	
Charges of Salvage Liv. 5433		
Deduct ¼ - 1358		
	4075	
So that the Loss to be paid on the Cargo amounted to 50 *per Cent.* being - -		Liv. 18897
Upon the Ship valued at *l.* 2400 *Ster.* a *d.* 32 ½ -		Liv. 53169 : 4
Which was sold for -		Liv. 16510
Deduct for Charges of Salvage		2971
		Liv. 13539

And

And for Difference in the Money,
25 *per Cent.* - 3385

Liv. 10154

Loss to be paid on the Ship, 80 $\frac{29}{32}$ *per Cent.* - - 43015 : 4

Liv. 53169 : 4

At which Rate the *London Assurance Comp.* had to pay

For £. 600 upon the Ship, at 80 $\frac{29}{32}$ *per Cent.* - £. 485 : 8 : 9
400 upon Goods, at 50 $\frac{1}{5}$ *per Cent.* 200 : 16

£. 1000 £. 686 : 4 : 9

N°. F.

Messrs. *S---s* finding no Objection to make to this Account, received the Payment accordingly, and the *Royal Exchange Comp.* afterwards adjusted the Sum, which they had underwrote, to Mr. *T---s T---s* in the same Manner. When regard is had to Equity, the most intricate Affairs are easily decided.

CASE

CASE XX.

Shewing how the Charges for Repairs were demanded, as well from the Insurers upon the Ship, as from the Insurers on the Freight, and for how much thereof they were esteemed liable in this Instance.

THE Ship *Seymour* laying at Anchor the 20th of *October*, 1744, in the Harbour at *Jamaica*, full loaden with Sugar, was ready to depart for *Bristol*, having all her Stores on board: But a violent Hurricane arose, which drove her from her Anchors, and she run a-shore. She had 7 Feet Water in her, and all her Masts were cut away, to prevent her oversetting. By which Precaution the greatest Part was still preserved; but she was obliged to be unloaded, and Part of the Sugar was washed away.

N°. A. Although the Ship appeared like a mere Wreck, yet upon narrow Inspection it was judged still practicable to repair her. Her Freight amounted to a considerable Sum, and it was worth while to be at the Expence it would require; which indeed ought to be very well weighed and considered, the Expences at *Jamaica* being much higher than in *Europe*, and they might even have exceeded the full Value of the Ship. She was repaired accordingly, and within 6 Months put in a Condition to prosecute her Voyage for *Bristol*. In the room of the Sugar that was washed out she took in others, and so again made up a full Loading as she had before. She arrived safely at *Bristol*, and delivered her Cargo.

N°. B. The whole Charges of the Repairs, the Maintenance of the Labourers and Ship's Company at *Jamaica*, amounted in the whole to *l.* 1891 : 11 : 1 *d.* a 140 *per Cent.* *l.* 1351 : 2 : 2

There was received from the Freighters, and made good to the Ship, according to a separate Calculation at *Bristol*, of what was charged in the general Average for what was cut away - - - 234 : 10 : 2

l. 1116 : 12

And

And when the Ship came to be examined again at *Briſtol*, it was found, that in order to put her completely into the ſame good Condition as ſhe was before the Hurricane, there would ſtill be required to be laid out upon her - - - 263 : 11 : 11

£.1380 : 3 : 11

And one of the Owners of the Ship having made Aſſurance on his $\frac{1}{3}$ Part, without making any Valuation in the Policies,

at *Briſtol* £.600 upon the Rigging and Materials of the Ship to pay 85 *per Cent.*
at *London* £.400 upon the Freight, to pay 85 *per Cent.*

for which he demanded $\frac{1}{3}$ of the abovementioned £.1380 : 3 : 11*d.* Charges, being - - £.460 : 1 : 4

For the Premium of £.400, which he had inſured thereupon, with Conſent of the Inſurers, at 21 *per Cent.* and Policy - 84 : 4 : 6

£.544 : 5 : 10

But the Inſurers in *London* alledged, that nothing was loſt of the Freight, and that the Repairs of the Ship concerned only the Aſſurers upon the Hull of the ſame, the Affair was therefore left to Reference; and as the Arbitrators could not agree among themſelves about the Manner of making up this Account, the following Queſtion was propoſed for Information Sake: N°. C.

If it be taken for granted
Firſt, That the Freight received at *Briſtol* was - - £.1695: 9
Deducting for Mens Wages and Proviſions - - 448: 4:2

Neat £.1246:16:2

CASE XX. N°. D. *Secondly*, That the Value of the Ship and fitting it out at *Jamaica* amounted together to - £. 1980

Then the Query is: What Part of the Charges, or how much *per Cent.* is to be paid

N°. E. *First*, By the Assurers on the Ship?
Secondly, By the Assurers on the Freight?

The Answer given was as follows:

From the Papers that have been produced, relating to the Ship *Seymour*, it seems to be evident enough, that the principal Motive for laying out so much Money for Repairs, after she was drove a-shore by the Hurricane, and reduced almost to a Wreck, was in order to save the considerable Freight of the Goods the Ship had on board, or to make the same up again another Way, which would have been absolutely lost, if the Ship had been
N°. F. abandoned or sold as unfit to proceed on her Voyage. As therefore both the Insurers on the Ship and the Insurers on the Freight reap the Advantage of these Repairs, they ought in Justice jointly to bear the Expence thereof, and to contribute their Shares towards the Salvage. The latter, in particular, have great Reason to be well satisfied with the Resolution taken of repairing the Ship.

N°. G. When a Person makes Assurance upon the Freight of a Ship, it is customary, and is no more than reasonable, that he then make the less Assurance on the Ship itself; for although the Assurance on the Hull is in its Nature different from the Assurance on the Freight, yet whenever an Account is made up, to prove or demand a Loss upon such Assurance, or to make a Repartition of the Salvage Charges, the same must be examined first in general, and afterwards looked over and compared together separately; for it often happens that the Owners include the fitting-out of the Ship, when they make Assurance on the Hull: And as the Fitting-out, Victualling, Mens Wages, Premium of Assurance upon the Ship, as well as Wear, Tear, and Diminution of the Materials by Time or Use, must all be produced by the Freight, it is to be observed that the same ought not to be charged

charged in both Parts, nor to make the Aſſurance or receive a Loſs double, which may probably have been the Caſe ſometimes. CASE XX.

It has alſo frequently happened, when an Inſurance has not been made to the full, and a Diſpute afterwards aroſe about the Diſtribution of the Charges of Salvage, that it has been neglected to make the Aſſured himſelf contribute thereunto for that Part, which he had inſured too little on the Value of the Ship and the Freight. N°. H.

And as Mr. *J---n G---n* had in this Caſe made the Aſſurance upon $\frac{1}{3}$ of the Freight £. 400 to pay 85 *per Cent.* £. 340
upon $\frac{1}{3}$ of the Ship £. 600, to pay 85 *per Cent.* 510
£. 850 N°. I.

And having not made any Valuation in the Policy, the Queſtion is, Whether by the above £. 850 he has inſured too little or too much? N°. K.

The Anſwer is:

The Freight at *Briſtol* has produced	£. 1694 :	: 9
From which the Mens Wages are only to be deducted, and inſtead of the £. 448 : 4 : 2 *d.* charged hereabove for the ſame, and for victualling, add for Mens Wages (ſuppoſing they were 3 Months on their Return home)	200	
Remains of the Freight, as a Riſk for the Owner of the Ship -	£. 1495 :	: 9
whereof the above $\frac{1}{3}$ would be -	£. 498 :	6 : 11
And in order to make up the Intereſt of the Aſſured to £. 850, there remains to ſet the Value of the Ship at £. 1054 : 19 : 3 *d.* if ſhe had performed her Voyage without meeting with this Misfortune, $\frac{1}{3}$ whereof is - -	351 :	13 : 1
	£. 850	

CASE XX.

In which Caſe the Ship would have been worth rather leſs than more after ſhe had finiſhed her Voyage, conſequently the Value thereof does not ſeem to be ſet at too low a Rate; The Que-

N°. L. ſtion is not at preſent about ſettling an entire Loſs, but about the Repartition of the Charges of Salvage, and it is evident, that every Aſſurer is chargeable with ſo much the leſs, in Proportion as the Sum inſured is larger, more eſpecially we will allow on theſe *l.* 850 as indiſputable.

$\frac{1}{3}$ of *l.* 1351 : 2 : 2 *d.* extraordinary Charges		
Deduct 234 : 10 : 2 from the general Average		
1116 : 12 - -	*l.* 372 : 4	
In order to inſure theſe Charges to the full, it ſhould have been done for 581 $\frac{36}{64}$ *l.* which at 21 *per Cent.* is *l.* 122 : 2 : 6 *d.* inſtead whereof it is now only demanded on *l.* 400, a 21 *per Cent.* -	84 : 4 : 6	
But as to the *l.* 263 : 11 : 11 *d.* for the further Repairs of the Ship it ſeems but reaſonable, the ſame ſhould be dropped, ſince in the Sum of *l.* 1351 : 2 : 2 there are comprehended many Articles of new Things, provided in the Room of old ones. The Inſurers therefore ought to bear of the *l.* 850 - -	456 : 8 : 6	

N°. M. However as there is a Difference between the Inſurers upon the Ship and the Inſurers on the Freight with Reſpect to their Objects, ſince the firſt, as it ſeems, are alone to bear the Expence of new Materials and Implements provided in the Place of what was loſt, and which remain with the Ship, whereby the Ship was rendered fit for further Uſe, Service and Voyages, with which View this Inſurance was made at that Time; but the latter are not ſubject to ſuch Diſburſements, but only liable to be called upon for the Expences incurred for the Preſervation of the Freight.

Therefore

Therefore one of the two following Directions ought, according to our Opinion, in this Case to be chosen. CASE XX. N°. N.

First, (a) To charge the Insurers on the Ship separately with the Prime Cost of the Materials that were provided new, and remain with the Ship; but *(b)* all Expences for Victualling, Workmanship, *&c.* to be born in common by the Insurers on the Ship and the Freight. Upon which Footing the sundry Articles in the Account for Masts, Sails, Cables, Rigging, bought new, amount together to - - £. 513 : 9 : 2
Commission at *Jamaica*, a 5 *per Cent.* 25 : 13 : 3

539 : 2 : 5

a 140 *per Cent.* 385 : 1 : 9

M. G--n's $\frac{1}{3}$ - 128 : 3 : 3
Premium a 21 £. *per* 64 - 42 : 3 : 1

£. 170 : 10 : 4

From £. 456 : 8 : 6
Deduct 170 : 10 : 4

Upon £. 1000 285 : 18 : 2 is
upon 600 - - - 171 : 10 : 11

For the Insurers on the Ship, a 57 *per C.* 342 : 1 : 3
Upon £. 400 for the Insurers on the Freight, a 28$\frac{1}{2}$ *per Cent.* - 114 : 7 : 3

£. 456 : 8 : 6

Or,

Secondly, (a) The Things bought new, the Workmanship and the Victualling may be valued at the Rate, as if the Ship had been repaired at *Bristol* or *London*, and then charge the whole Amount to the Insurers on the Ship; but *(b)* let the Insurers on the Freight bear the Difference of as much as the Things cost more at *Jamaica*. Which last Direction is, without Doubt, the most exact and regular. N°. O.

CASE

CASE XXI.

Shewing how the Loss upon a Parcel of Hemp, which was refused on Delivery by the Buyer, was calculated and demanded at a losing Market according to Prime Cost, and the Insurer on the contrary insisted, that the same was not regular.

IN *September Anno* 1747. *H. R.* had made Assurance with the *London Assurance Company* for £. 2500 upon Goods by the Ship the *Diamond*, Capt. —— *Young*, from *St. Petersburg* to *Plymouth*, a $6\frac{1}{2}$ *per Cent.* Premium, to return 2 *per Cent.* in Case the Ship departed from the Sound with Convoy.

The Ship arrived at *Plymouth* in *January Anno* $174\frac{7}{8}$, and of the Cargo of Hemp, which was sold upon Delivery to the King's Dock at £. 28 : 10, where upon Delivery 481 : 1 : 21 lb. were refused as unserviceable. *H. R.* was of Opinion, there was no Foundation for refusing so much of it; however seven Months elapsed before he gave over all Hopes of a further Delivery, and put the refused Hemp up to publick Sale.

N°. A. The Market Price was fell above 20 *per Cent.* *H. R.* endeavoured to prove, that all the Damage was occasioned by Sea-Water in the Voyage, and required of the said Company to make good to him, according to the following Account, upon the Cost:

1653 Pood 10 lb. damaged, a 11 Rub. $34\frac{1}{5}$		*Rub.* 1875 : 12
Charges a 2 Rub. *per Bosq.* - -		330 : 65
		Rub. 2205 : 77
	a 4 *s.* 6 *d.*	£. 496 : 5 : 11
Sound Duty - - -		6 : 17 : 1
Premium of Assurance of £. 530, a $4\frac{1}{2}$ *per Cent.* - - - -		23 : 17

Custom

CASE XXI.

Cuſtom of 24 Tons 1 : 3, a 52 *s.* -	£. 63 : 13 : 4		
Allowance - -	20 : 3 : 2		
		43 : 10 : 2	
Freight of 24 Tons 13 : 3 : 7 lb. a £. 4 : 8		107 : 12	
Fetching a-ſhore and landing -		11 : 4	
		£. 689 : 7 : 4	
For the neat Proceed of Tons 24 : 1 : 1 : 21 ſold at *Plymouth* - -		337 : 19	
		£. 351 : 8 : 9	

Againſt which the Company alledged, that it was well known, that there generally was ſome Refuſe among a whole Cargo of Hemp, even when the Sea had not waſhed over the Ship, therefore an exact Enquiry was abſolutely neceſſary, to know, whether this Refuſe was not partly bad already before it was put on board, as likewiſe, whether at the Time of unloading there appeared any plain Marks of the Sea-Water on the Bundles, before they were opened and mixed together. Beſides that the Company was no more liable to bear the Loſs upon Goods, when they come to a loſing Market, than they eſteem themſelves entitled to any Part of the Profit, when they are ſold to Advantage. Therefore the Regulation of the Damage could not be ſettled any other Way, than by calculating the Difference of the Prices between the damaged and the ſound, and if then at the Price of the ſound, the Goods come to more than what they coſt, and are aſſured for, that the Proprietor ought to be looked upon as his own Inſurer for ſo much as they amount to more or the Profit, and to bear the Loſs in Proportion; But if the Cargo at the Market Price does not produce ſo much as it coſt, then ſuch Difference ought to be divided upon the Prime Coſt with Addition of the Premium; becauſe, in Caſe of a total Loſs, the Aſſured would have received his Payment at that Rate, or had the Premium returned him for ſo much as might have been ſhipped leſs than was inſured. N°. B.

H. R.

CASE XXI.

H. R. was of Opinion, that by keeping and deferring the Sale of refuſed Hemp ſo long, he had acted for the Benefit of the Company, becauſe, during that whole Interval of Time, he had not neglected to ſollicit the King's Officers, to receive ſome more thereof, and then he ſhould have had no Demand at all upon the Company for that Part, which he had perſuaded them to take. But they maintained, that, notwithſtanding this, they had nothing to do with the Conjuncture, or the Riſe and Fall of the Goods, which by keeping of them in this Inſtance turned out to his, the Proprietor's, Loſs, but, if, for Example, Hemp had riſen to 40*s.* and the damaged could in Proportion have been ſold for 30*s.* being more than it coſt, or it was agreed to be delivered at, in that Caſe, *H. R.* would have been intitled to have demanded 25 *per Cent.* of the Company, becauſe the Hemp was grown actually ſo much the worſe in Quality.

N°. C.

They therefore made up the Account, as follows:

481 : 1 : 21 lb. damaged were ſold in *July* for - - - -	*l.* 337 : 19	
If the ſame had not been damaged, would have been worth, at the Price, as it was the 23 *July* - - -	553 : 14	
	l. 215 : 15	
Paid leſs for Cuſtom - -	20 : 3	
	l. 195 : 12	
Which, becauſe at the Price of the 23d the Value of the Cargo was leſs than it coſt, are to be divided upon the Coſt of		
the Hemp -	*Rub.* 9322 : 21	
the Iron -	1289 : 37	
	Rub. 10611 : 58	

a 4½*s.*

CASE XXI.

a 4½ *s.* - - - *l.* 2387 : 11

Premium of *l.* 98
6 : 10

l. 91 : 10 to insure
l. 100 makes for *l.* 2387 : 11
l. 2609 : 6 a 6½ *per Cent.* - 169 : 12

l 2557 : 3

Upon *l.* 2557 : 3 to pay - *l.* 195 : 12
how much for *l.* 98? A. - 7 : 9 : 9
And to receive of the *London* Assurance Company for *l.* 2500, a *l.* 7 : 9 : 9 - *l.* 187 : 3 : 9

Hereupon the Assured consented to accept *l.* 200 for his Demand of *l.* 351 : 8 : 9 *d.* and thus this Affair was adjusted. N°. D.

CASE XXII.

CASE XXII.

Shewing how a particular Average upon Goods was calculated at Lisbon, *according to the Price there, and how it was settled with the Insurers in* London.

IN the Year 1748 an Average was to be settled with some Private Insurers at *London* upon Goods shipped at *Hamburgh*, on board the Ship *Orient*, bound for *Lisbon*, which was stranded on the Coast of *Portugal* near *Paniche*.

The Account Sales were of the following Contents:

Lisbon, the 23 July 1748.

ACCOUNT Sales of 12 Chests, containing 1500 Pieces *Bretagnes*, shipped by Messr. *P. H. St--n* and *S--n* on board the Ship *Orient*, which was stranded at *Paniche*, and this Parcel saved, being sold N°. A.

CASE XXII.

490 Pieces without Average to *V--o*, *D--o* and C°, for ready Money, a 1290 Rees — *Rees* 632m100

1010 Pieces damaged, have rendered at a publick Sale, at the Rate it has been ſettled, by the Account of Meſſ. *J--n* and *D--ll*, *G--r*, who aſſiſted and acted at the Sale as Attorneys for the Inſurers in *Holland* - - - 861m376

Rees 1493m476

CHARGES.

Freight, 12 *Cruſados*, a 480 *Rees* with 10 *per Cent.* ordinary Average in Diſpute *R.*

Paid to the abovementioned Adminiſtrators for Salvage and other Charges of delivering into the Cuſtom-houſe 490 Pieces, that came free from Average upon the Prime Coſt, amounting to *Rees* 525m680 a 10 *per Cent.* - 52m568

Duty of 350½ Pieces in 490 Ps. valued at 433 *Rees* and 25 *per Cent.* - *Rees* 37m941

Deduct ⅕ Part being for Goods ſaved - 7m588

30m353

Ticket 240 *Rees*, Meaſurer in the Cuſtom-houſe 200 *Rees* 4m040

To affix the Seals 100 *Rees*, Writers 11 *Rees*, Binders 10 *Rees* - - 6m200

Warehouſe Rent 200 *Rees per* Cheſt m800

Brokerage ½ *per Cent.* with the Certificate - - 7m947

Paid

CASE XXII.

Paid to the aforeſaid Adminiſtrators to defray the Charges of Salvage, and other Expences of entring at the Cuſtom-houſe and the publick Sale, 16 ¾ *per Cent.* upon the groſs Produce	144m280	
Conſulage of 1580m, a 1 *per Cent.*	15m800	
For the Poor, a 2 *per Mille*	2m987	
Commiſſion, a 3 *per Cent.*	44m804	
		309m096
Neat *Rees*		1184m380

J---y and *B---n.*

N°. B.

J---N G---R, *Conſul General of Their High Mightineſſes the States General of the United Netherlands in* Portugal *and the Dominions thereof*, &c.

BE it known, where and to whomſoever it may concern, that in Purſuance of the full Power granted unto Us *J---n* and *D---l G---r*, We have proceeded to and begun the publick Sale of the Goods ſaved out of the Ship *l'Orient*, *Nicol. Nummels*, bound from *Hamburgh* to this Port, which was ſtranded, on the 13 *March* 1748 and the following Days, of which the Proportion appertaining to the 1010 Pieces *Bretagnes* aforeſaid after deducting 16 ¾ *per Cent.* for Duties, Salvage, Charges, *&c.* at the Rate of their Prime Coſt is *Rees* 717m096, as appears here above; Likewiſe, that We have received of Meſſ. *J---y* and *B---n Rees* 52m568 for the 490 Pieces delivered to them, being the Amount of the Charges upon ſaid Goods, a 10 *per Cent.* according to the Invoyce thereof; And that this may appear, whereſoever required, I have given theſe Preſents under my Hand and Seal. In *Liſbon*, the 23 *July* 1748.

J---N G---R.

CASE XXII.

Lisbon, the 23 July 1748.

N°. C. ACCOUNT Sales *pro forma*, of what the aforeſaid 1500 Pieces *Bretagnes* would have produced, if they had not been damaged.

1500 Pieces, a 1290 *Rees* - *Rees* 1935m000

CHARGES.

Freight, *Cruſados* 12, a 480 *Rees* and 10 *per C.* with unloading *Rees*	6m636	
Duty of 1071 Pieces, in 1500 Ps. a 483 *Rees*, a 25 *perCent.*	115m935	
Ticket 240 *Rees*, Meaſurer in the Cuſtom-houſe, a 200 *Rees*	2m640	
To affix the Seals, a 11 *Rees*, and 100 *Rees per* Cheſt, Binding a 10 *Rees per* Dozen -	19m950	
Sundry Charges in the Cuſtom-houſe - - -	4m944	
Bringing home - -	1m300	
Warehouſe Rent - -	2m400	
Brokerage, a ½ *per Cent.* -	9m675	
For the Poor, a 2 *per Mille* -	3m870	
Commiſſion, a 3 *per Cent.* -	58m050	
		225m400
	Rees	1709m600

J---y and *B---n.*

N°. D. To which was annexed a Certificate from *S---n da S---a*, a Broker, that the 490 Pieces *Bretagnes* had been ſold at 1290 *Rees*.

Againſt theſe Accounts no Objections were made, but it was in Regard to the *l.* 400 inſured upon 12 Cheſts, containing

1500

1500 Pieces *Bretagnes*, allowed, that in Caſe they had arrived ſound, the Neat of them at *Liſbon* would have been — *Rees* 1709m600 — CASE XXII.

but now they were damaged — 1184m380

The Loſs therefore is — *Rees* 525m220

Upon 1709m600 *Rees*, Value at *Liſbon* 525m220 *Rees*

a 5½ *s.*	a 5½ *s.*
l. 470 : 3	*l.* 30 : 2

How much to pay for *l.* 98 of 100?

l. 144 : 9

Adjuſted by the Brokers *G--n* and *G--n*, and there was paid accordingly — N°. E.

For *l.* 200	aſſured by	*J--n T--r*	*l.* 60 : 4
100	-	*B--n le H--k*	30 : 2
100	-	*S--ll P--t*	30 : 2
l. 400	to pay 98 is 392		*l.* 120 : 8

The Prime Coſt of which 1500 Pieces *Bretagnes* was with the Premium of Aſſurance Mks. 5270 : 3 *s.* a 34 *s.* - *l.* 413 : 6 : 8

Coſt not inſured -	*l.* 21 : 6 : 8	
Profit -	56 : 16 : 4	
So the Proprietors bear of theſe Salvage Charges and Loſs a 30 *per Cent.* for 98 *l.* of	*l.* 78 : 3	23 : 18
		l. 144 : 6

REMARKS.

From the above Atteſtation of the Dutch Conſul it appears, that ſome of the damaged Goods, which were ſaved, were put up to publick Sale, and that the Sum, they produced, was divided among the Proprietors of each Species in Proportion to the — N°. F.

CASE XXII. the Prime Coſt of them, and was done by Reaſon of the Difference in the Prices, for ſo much as the *Bretagnes* of one coſt more than thoſe of another.

N°. G. Suppoſing there had been mixed together the above 1010 Pieces, which coſt in the Groſs Mks. 3 : 8 *Mks.* 3535

with other { 1010 - - 4 - 4040
1010 - - 3 - 3030

Mks. 10605

And that all the 3030 Pieces together had produced 2584m128 *Rees* in the Groſs at the Sale in *Liſbon*, then the Proportion

For the firſt 3535 *Mks.* would have been *Rees* 861m376
the 2d 4040 - - 984m430
the 3d 3030 - - 738m322

Rees 2584m128

N°. H. And in ſo far Equity has been near enough obſerved; but in Regard to the Duties and Charges of unloading, ſome Prejudice ſeems to have been done the Owners of the finer *Bretagnes*, by making the courſe and fine Sorts pay equally alike, for this ought not to have been divided upon the groſs Produce at the Sale, but upon the Number of Pieces, ſince the Valuation for the Duties was the ſame of every Piece.

For inſtead of reckoning, as ſeems to have been done, the Duties upon 3030 Pieces for 2167 Pieces, a 433 *Rees* and 25 *per Cent.* deducting $\frac{1}{5}$ Part - *Rees* 187m662

and dividing the ſame upon *Rees* 2584m128
makes upon
the firſt, *Rees* 861m376 - *Rees* 62m554
ſecond, 984m430 - 71m490
third, 738m322 - 51m618
Which ſhould have been only
Rees 62m554
62m554
62m554

Beſides

CASE XXII.

Beſides the Charges of Salvage for the Goods delivered ſhould more properly have been calculated upon the Value of them at *Liſbon*, and not on their prime Coſt. But as here the whole conſiſted of Linnen, upon which there is but little Difference in the Profit, and it could not be pretended from the Proprietors, to put them all promiſcuoſly up at Public Sale for that Reaſon, nor is ſtrict Juſtice always ſufficiently regarded in the Appraiſements of Brokers; and as the Repreſentatives of the Proprietors and Aſſurers in *Holland* did all together conſent to have the Repartition made in that Manner, therefore no reaſonable Inſurers in *London* could well deſire it otherwiſe neither. It is not to be preſumed, if any Goods had been found among the Reſt at *Liſbon*, that were not worth ſo much there as they coſt, that the Proprietors of them would have agreed to contribute for more than the actual Value of them at that Place.

N°. I.
N°. K.
N°. L.
N°. M.
N°. N.

Upon the ſame Footing ſeveral other Averages have been adjuſted in *London*, by calculating the Loſs according to the Difference between the Prices, for which the damaged and the ſound Goods were ſold, and to make the Proprietor contribute as his own Aſſurer for ſo much of the Coſt as he had not inſured to the full, nor the Profit.

N°. O.

An Inſtance of an Average with the *London Aſſurance Comp.* upon 2 Packs containing 1008 Pieces *Bretagnes* ſent from *Hamburgh* to *Liſbon* by the Ship *Anne Elizabeth*.

N°. P.

The

The Parcel did produce,

613 Pieces found at 1380 Rees, for ready Money
395 damaged by Sea-Water, at 700 Rees

		Rees 845m940	} which, if they had all been found,
		276m500	} would have produced 1380 Rees.
		Rees 1122m440	*Rees* 1391m040

CHARGES.

For Freight Cruſados 13 a 480 Rees and 10 *per Cent.* -	*Rees* 7m344		*Rees* 7m344	
Duties of 613 ps. -	47m089		77m940	
Ditto 395 - -	15m263		1m040	
For to ſeale 1008 ps. -	12m408		12m408	
Sundry Charges - -	3m506		3m506	
Bringing home -	m960		m960	
Warehouſe Rent - -	1m600		1m600	
Brokerage, a ½ *per Cent.* -	5m612		6m955	
The Poor, a 2 *per Mill.* -	2m245		2m782	
Commiſſion, a 3 *per Cent.*	33m673		41m731	
		134m020		156m266
	Neat *Rees*	988m420	Neat *Rees*	1234m774
				988m420
	Loſs *Rees*			246m354

Upon

Upon Rees 1234m774, is loſt Rees 246m354 — CASE XXII.

a 5 ½ — a 5 ½

£. 339 : 12 : 2 *d.* — £. 67 : 14 : 11 *d.*

how much upon 98 £. makes 19 £. 11 *s.*

is for £. 290 inſured a 98	£. 284 : 4	£. 56 : 14	
55 being the Coſt and Profit not inſured	55 : 8 : 2	11 : : 11	N°. Q.
	339 : 12 : 2	£. 67 : 14 : 11	N°. R.

But on the Part of the Inſurers, ſpecial Caution ſhould be uſed, not to truſt in Calculations of this Kind to the Reports of Brokers alone, but to inſiſt on a Demonſtration of the Difference in the real and actual Sales.

CASE XXIII. — CASE XXIII.

A Policy of Aſſurance upon the Life of Cattle.

WE the here-underwritten Aſſurers promiſe and oblige ourſelves to aſſure, and do hereby aſſure you *G----d R-----e* and *S---n*, or, on Behalf of any other Perſon, to ſay each of us the Sum underneath reſpectively mentioned. And this Aſſurance is made upon 62 Heads of Oxen, which are now at Graſs in the County of *Oldenberg*, upon the Eſtate of General *Brilow*, next to *Ovelgonnen*, as it is called, and belonging to the above, and with Conſent of us Aſſurers, he the Aſſured values the ſaid Oxen at 14 Rix-Dollars N. ⅔ *per* Head with the Premium, wherewith we are content, whether they coſt or are worth more or leſs; nor ſhall the Aſſured be obliged to produce any further Proof or Account beſides this Policy in caſe of any Damage or Loſs. We alſo conſent, that the Aſſured may make his Aſſurance to the full, without being obliged to run 10 *per Cent.* or any Riſk whatever, notwithſtanding the Ordinances of Aſſurances may ſay otherwiſe: For we freely of our own Ac- N°. A.

CASE XXIII.

cord take upon ourſelves all Damages or Misfortunes, that can be imagined or not, to befall, or that may befall, theſe Oxen; putting ourſelves in all Reſpects for every Thing in the Place of the Aſſured, to keep him free and harmleſs from all Difficulties whatſoever, without any Exception, notwithſtanding any good or bad Advices, beginning the Riſk from this Day, and to continue to the 15th of *October* of this current Year 1720; promiſing, in caſe of Damage, to pay to you, or the Bearer hereof, all the Loſs you ſhall ſuffer in Proportion to the Sum underwrote, by each of us hereunder, as well the firſt of us as the laſt; and that within 2 Months next enſuing, after due Notice and Intimation has been given us, of what Loſs or Damage has happened in regard to this Aſſurance. And we acknowledge to have been paid the Premium of this Aſſurance by the Hands of *Abraham van Herzeele*, in full, after the Rate of 10 *per Cent.* in N. $\frac{2}{3}$, after the Uſage and Cuſtom of the *Exchange* at *Antwerp*; to which we ſubmit ourſelves, in ſo far as it is not contrary hereunto; binding for this Purpoſe all our Goods, and renouncing, upon good Faith, and as under Oath, all Exceptions and Cavils to the contrary. Thus done in *Hamburgh*, in the Year 1720.

REMARK.

N°. B. In this Policy it would have been highly neceſſary to mention more particularly, that the Aſſurers did take upon themſelves the Danger and Riſk of all Diſtempers and Sickneſſes, Robbery, Force and all other Accidents, whether to be imagined or not, that might happen to theſe Oxen.

Writings for ſettling the Loſs.

N°. C. We the Burgomaſter and Senate of the City of *Bremen*, make known and atteſt hereby publickly, that *Arend Korthan*, our Citizen and Merchant here, perſonally appeared before us, acquainting us, that in the Year laſt paſt, 1720, he had made an Aſſurance at *Hamburgh*, by *G---d R---e* and *S---n* there, upon 62 Heads Oxen, which Oxen, conformable to the Tenor of the Policy of Aſſurance made out for the ſame on the 27th *June* of ſaid Year, were then

CASE XXIII.

then ſtill all ſound and well: nor had any of them died at that Time, as he aſſured on Oath: And he further humbly requeſted to be interrogated upon Oath to the five following Points, and graciouſly to grant him an Atteſtation, *viz.*

N°. D.

INTERROGAT.	*ANSWERS.*
I. When were the Oxen, upon which the Aſſurance was made, put to Graſs?	I. In the Month of *May*, the uſual and cuſtomary Time for putting Cattle to Graſs.
II. How many Head were in all at Graſs for *Arend Korthan?*	II. The 62 Head upon which the Aſſurance was made at *Hamburgh*, beſides 2 Oxen belonging to another Friend: And there were at Graſs beſides 3 Oxen for other People, making together 67 Head.
III. Had *Arend Korthan* no Oxen at Graſs in any other Meadows on the ſame Eſtate?	III. In no other Meadows than the two which have been named, *viz.* the *Mill Meadow*, and the ſmall *Stone-Horſe Meadow*.
IV. How long did the Oxen continue well, and when came the Mortality amongſt them?	IV. In the Month of *July*.
V. What was the Occaſion of it, and were the Meadows good, or any Ways ſuſpected?	V. The Reaſon no Man can know, but it was the Hand of God; nor were the Meadows ſuſpicious in my Opinion, ſince it is not to be preſumed that the Meadows could be had in Suſpicion, for it was never yet to be diſcovered, that the Cauſe of the Diſtemper proceeded from the Ground.

Which reaſonable Requeſt we could not refuſe the Petitioner, he having actually confirmed the Truth of the above-written Depoſition with his corporal Oath, before us, as God ſhould help him. We, Burgomaſter and Se-

CASE XXIII.

nate aforeſaid, atteſt and certify therefore, that his Depoſition made before us upon Oath, by theſe our Letters Patents, is corroborated with our Knowledge under our City Privy Seal. Signed *Bremen*, the 19th of *July* 1721.

N°. E. The Court of Aſſizes appointed by his Royal Majeſty of *Denmark*, *Norway*, *&c. &c.* for the Town and Diſtrict of *Jadinger Land*, doth certify and make known, that upon Receipt of a requiſitorial Order from the King's Honourable Regency at *Oldenburg*, dated the 19th *Sept.* 1720, to this Court, the two following Perſons being appointed by M. *Arend Korthan* of *Bremen*, viz. *J. J. Wilhelms* and *J. Oddings*, having beforehand been ſeriouſly exhorted to avoid Perjury, did, on the 30th *October*, 1720, before the Court, make the following Declaration upon Oath, in relation to ſome Oxen, which the ſaid *Arend Korthan* had at Graſs in this Country.

Form of the O A T H.

I *J. J. Wilhelms*, and I *J. Oddings*, Herdſmen to *Arend Korthan*, take our corporal Oath to God: And firſt, I *J. J. Wilhelms* for myſelf in particular, that I this Year had for my Share the Care of 37 Head of Oxen from ſaid *Arend Korthan*, on the little *Stone-Horſe Meadow*; but 22 of them died, whereof 18 were buried with their Skins, and the other 4 without, having been flead firſt; and that *Arend Korthan* told me there was one Ox among the 37, which belonged to a Perſon on the other Side of the *Weſer*, but did not mention his Name to me, which Ox was among the Number of the Dead, and that two Oxen, which are both alive, were for ſome Friends. And next I *J. Oddings* ſwear a corporal Oath to God, that I for my particular did attend on 30 Head of Oxen for *Arend Korthan* in the *Mill Meadow*, but that 23 of them died, of which 19 were buried with their Skins, and the other 4 without, having been flead firſt; and that the ſaid *Korthan* told me himſelf there were 2 Oxen among them that belonged to ſome other People, which he did not name to me, and the ſaid two Oxen are likewiſe both dead. All which is herewith confirmed by the Court, and a judicial Atteſtation thereof granted to the ſaid *Arend Korthan*, Merchant of *Bremen*. In Witneſs, *&c.*

Calcu-

CASE XXIII. N°. F.

Calculation of the Loſs upon 62 Head of Oxen, valued in the Policy at
14 Rix-Dollars *per* Head with Premium, N. $\frac{2}{3}$ - - *Mks.* 2604

The Loſs thereupon, *viz.*

18 Oxen remained alive
42 Oxen died, a 14 Rix-Dollars - *Mks.* 1764
2 Oxen killed, a 14 Rix-Dollars *Mks.* 84 :
have produced as *per* Account 54 : 13
29 : 3
For the Atteſtation upon Oath - 10 : 13
For travelling Expences to procure the Atteſtation - - - 6 : 10
Mks. 1810 : 10

Which *Mks.* 1810 : 10*s.* N. $\frac{2}{3}$, divided upon the Capital of *Mks.* 2604, make 69 $\frac{1}{2}$ *per Cent.* and the Aſſurers did pay 67 *per Cent.*

Account of 2 Oxen brought from *Ovelgonne* hither, with Conſent of the Aſſurers, and killed here, have yielded, *viz.*

For 498 lb. Beef, a 2 gr. 4 ſchw. *per* lb. *Rix Drs.* 19 : 26 $\frac{1}{2}$
20 Tallow, a 6 gr. - 1 : 48
The 2 Hides together - 3 : 48
Deduct Charges - *Rix Drs.* 24 : 50 $\frac{1}{2}$
For Exciſe for the two Oxen *Rix Drs.* 2 : 7
Salt, Vinegar, and Pepper to preſerve the Meat - 1 : 12
bringing the Oxen hither 3
6 : 19
Rix Drs. 18 : 31 $\frac{1}{2}$

AREND KORTHAN.

CASE

CASE XXIV.

CASE XXIV.

Shewing how a general and particular Average upon a Cargo of Hides and Lead by the Ship Industry, Captain William Henry, *from* Liverpool *for* Leghorn, *was settled at the last-mentioned Place.*

Liverpool, the 21st *Nov.* 1750.

N°. A. INVOICE of 456 Pieces Lead shipped for *Leghorn*, on board of the Ship *Industry*, Capt. *William Henry*, to the Consignment of Messrs. *L*--- and *T*---*s* there, being for Account and Risk as hereunder specified, *viz.*

N°. 38	N°. 1 to 19		76 Pieces
39	1	22	88 ditto
40	1	23	92 ditto
41	1	20	80 ditto
57	1	6	24 ditto
58	1	11	44 ditto
59	1	13	52 ditto

456 Pieces, weighing together 35 Ton 5 C. 1 qr. 18 lb. a 12 *l. per* Ton, is £. 423 : 4 : 9

CHARGES.

Custom, Town Dues and Cocquet			£. 46 : 18 : 1½
Expences in *Wales* on buying the Lead	-	-	15
Freight from *Wales*	-		5 : 5
Bills of Lading 9 *d.* Cartage 8 *d.* *per* Ton	-	-	1 : 4 : 1
			54 : 2 : 2½
			£. 477 : 6 : 11½

Transf-

CASE XXIV.

Tranſport from the other Side	£. 477 : 6 : 11½	
Commiſſion 2 *per Cent.* -	9 : 11 : 11½	
	£. 486 : 18 : 11	

S. E.

Liverpool, the 21ſt *Nov.* 1750.
A---r and *B---n H---d.*

½ Mr. *C. L---s* - -	£. 243 : 9 : 5½
¼ Mr. *D. C---n* - -	121 : 14 : 8¾
¼ *A---r* and *B---n H---d* -	121 : 14 : 8¾

N°. B.

Liverpool, the 29th *Nov.* 1750.

Invoice of 1300 Hides ſhipped for *Leghorn* on board of the *Induſtry*, Capt. *William Henry*, to the Conſignment of Meſſrs. *P---e*, *L---s* and *T---s* there, for Account and Risk as hereunder mentioned, *viz.*

1000 Hides weighing	30329 lb.
300 Ditto -	9032
	39361 lb. a 8½ *d.*
	per lb. £. 1394 : : 8½

CHARGES.

Cocquet, Cuſtom, and Fees to the Officers -	£. 27 : 16 : 6½	
Paid for examining, collecting, and ſending away 300 Hides	3	
Carriage of 300 Hides	3	
Ropes, Packing, Cartage, and Porterage -	4 : 6 : 8	
Port Charges -	3	
Warehouſe Rent -	1 : 15	
Commiſſion 2 *per Cent.*	27 : 17 : 9	
		70 : 15 : 11½
S. E.	£. 1464 : 16 : 8	

A---r and *B---n H----d.*

½ Mr.

CASE XXIV.

½ Mr. *C. L---s* - -	£.	732 : 8 : 4
¼ Mr. *C——n* - -		366 : 4 : 2
¼ *A——r* and *B——n H——d* -		366 : 4 : 2

N°. C. Account Sales of 834 Hides in 167 Bundles and 354 Pieces Lead, received by the Conſignation of Meſſrs. *A---r* and *B——n H——d* at *Liverpool*, by the Ship *Induſtry*, Capt. *William Henry*, for Account as under ſpecified, and ſold as follows, *viz.*

21 *May*, 150 Hides damaged, neat			
5640 lb. a 18 ⅞ S. *per* lb.			
to the beſt Bidder,		Ps.	887 : 2 : 6
544 Ditto ditto	20847 a 15 ½ S.		2692 : 14 : 9
130 Ditto ditto	5290 a 15 ⅞		699 : 16 : 5
834 Hides	31777 lb.	Ps.	4279 : 13 : 8

Licence for the public Sale 1 ¼ *per Cent.* -	ps.	53 : 9 : 10	
To the Appraiſers of the Damage -		13 : 18 : 3	
			67 : 8 : 1
	Ps.		4212 : 5 : 7

Freight £. 100 *Sterl.* a *d.* 50	*Ps.*	480
⅔ Poſt-Charges -		18 : 14
Primage, *&c.* - -		40
	Ps.	538 : 14

Duty and Ticket -	17 : 8 : 1
Bringing aſhore and into the Warehouſe -	20 : 17
Warehouſe Rent and Stowage	20 : 17
People to ſpread the Hides out	6

Sen-

CASE XXIV.

Sentence of the Judge, Writings of the Solicitors here, and at *Piſa*, and of the Conſul, which we have charged in the general Average - -	46	
Brokerage - -		
Commiſſion, 2 *per Cent.*	84 : 4 : 10	
	734 :	: 11
	Dol. 3478 : 4 : 8	

354 Pieces Lead, *viz.*

16 *June*	160 Pieces, lb. 38100 neat a Ducats 21 ½ *per* Mil. and 3 *per Cent.* to *Rangoni*	*Dol.* 927 :	: 2
17 Ditto	30 ditto 7280 a 21 ½ to *J. Melo* -	177 :	2 : 7
25 Ditto	40 ditto 9690 a 21 ½ to ditto at 2 *per Cent.*	238 :	14 : 2
30 Ditto	20 ditto 4700 a 21 ½ and 3 *per Cent.* to *Jean Clanetti* -	115 :	13 : 9
7 *July*	104 ditto 24900, a 21 ½ and 3 *per Cent.* to *Ragueneau* -	595 :	5 : 5
	354 Ps. lb. 84670 neat *Dol.*	2053 :	16 : 1

Freight charged upon the Hides - Ps.	:	:
Duty and Ticket	50 :	15 : 8
To bringing a-ſhore and into the Warehouſe -	24 :	15 : 7
Warehouſe-Rent and ſtowing -	17 :	14
Brokerage ½ *per Cent.*	10 :	5 : 4

CASE XXIV.

Commiſſion 2 *per Cent.* 41 : 1 : 6

144 : 12 : 1

1909 : 4

Dol. 5387 : 8 : 8

Leghorn, the 13 *July*, 1750.

S. E. *P——re L——ois* and *S---n.*

Proteſt of Capt. William Henry.

N°. D. THE Captain declares that he ſailed from *Liverpool* on the 21ſt of *December*, 1749, Old Stile, and ſo continued with variable Weather till the 2d of *January* of the ſame Stile, when he met with a Storm, which prevented him from proceeding on his Voyage, and therefore he went that ſame Day into the Port of *Falmouth*, where he was forced to continue at Anchor till the the 8th of that Month, when he came out from *Falmouth* on his intended Voyage; but on the 11th of the ſaid Month was again overtaken by a violent Storm from *S.S.W.* with a great Sea, and having ſhipped a great deal of Water, he was obliged to pump, the Leather at the ſame Time, by ſucking in of the Water, became of an extraordinary Weight, and the Storm connued, wherefore he reſolved to fling ſome of the Leather, and 100 Pieces of Lead, which lay upon it in the Hatchway, overboard for common Security, whereby the Ship was lightened, and he proceeded on his Voyage till the 28th of *January*, when finding himſelf three Degrees from the *Lizard*, he met with another violent Storm from *S.S.E.* and very great Sea, which put him under the Neceſſity to throw 500 Hides more overboard, in order to ſave the Ship, and preſerve his own and the Mens Lives; and as the Wind being contrary, cauſed the Ship continually to fall a-ſtern, he put into the Harbour of *Plymouth* on the 6th of *February*, in order to have the Ship repaired, where he remained till the 6th of *March*, when he got under Sail to proceed on his Voyage; but when he came in Sight of *Mahon*, found that he was ſhort of Water, ſo put in there; and having provided himſelf with what he had Occaſion for, ſailed again, and

and on the 14 *April* old Stile arrived here at *Leghorn*, where he made this preſent Proteſt, *&c. &c.* CASE XXIV.

Witneſſes

NICHOLAS WALLIS, Mate, 40 Years of Age.
WILLIAM CAMUEL, Seaman, 35 Years of Age.

Sentence of the Judges of *Piſa*.

WE, CAVRI QUINTILIO GALEOTTI and NICCOLO GAMBI, Nobles of *Florence*, and Conſuls of Marine for the City of *Piſa*, as likewiſe lawful Judges in Civil, Maritime and Mercantile as well as intermixt Cauſes, decree in the Cauſe between *William Henry*, Maſter of the Ship *Induſtry*, and *P--re L--s* and *S--n*, Receivers of the Cargo of ſaid Ship, which Cauſe is now depending before Us and Our Court, that the ſaid Captain muſt be cleared and abſolved, and We do accordingly clear and abſolve him with his Ship and People from all Loſs and Damage upon the Cargo of Hides and Lead, which he brought to *Leghorn*, and delivered there, ſince ſuch Loſs and Damage was occaſioned by the Neceſſity of flinging Part of the Hides and Lead over-board for the Preſervation of the Ship, the Lives of the People and of the Cargo, and to prevent the imminent Danger the Ship was in of being loſt in the Voyage from *Liverpool* to *Leghorn*, without any Fault or Defect of the Ship, or Miſmanagement or bad Conduct of the Maſter and Mariners, leaving ſuch Damage and Loſs, *&c.* upon the Hides and Lead to thoſe whom it may concern, and We will, that the ſaid *P--re L--s* and *S--s*, as Receivers of the Cargo, do pay to the Captain the full Freight as well for the Hides and Lead, that have been delivered, as for what is wanting. Further We condemn the ſaid *P--re L--s* and *S--s*, that in the Average for Repairs, and making good the Hides and Lead flung over-board, as likewiſe of the Expences of the Taxation, they ſhall bear the Proportion for the Value of the Hides and Lead, and the Captain for half his Ship and one third Part of the Freight. N°. E.

CASE XXIV.

Atteſtation of the Broker concerning the publick Sale of the Hides.

N°. F.

I the underwritten publick Auctioneer teſtify to all, whom it may concern, that Meſſ. *P--r L--s* and *S--s* had the following Parcels of Hides ſold at publick Sale, which were delivered on the 13 *May* 1750. in Manner following:

To Meſſ. *B--e* Brothers, 150 Hides damaged with 1 *lb. per* Hide, Tare and 2 *per Cent.* cuſtomary Tare, have produced only *lb.* 5640 neat, a 18 $\frac{7}{8}$ . .	*Dol.* 887 : 2 : 6	
To ditto - 130 Hides more damaged, *lb.* 5290 neat, a 15 $\frac{7}{8}$ . .	699 : 16 : 5	
To *G--o M--s* 544 Hides ſtill more damaged, the Weight whereof was agreed to be ſettled upon an equal Footing with that of the 150 Hides make *lb.* 20847 neat, a 15 $\frac{1}{2}$	2692 : 14 : 9	
	Dol. 4279 : 13 : 8	
Deduct the uſual Expences of publick Sale, a 1 $\frac{1}{4}$ *per Cent.* . . *Dol.* 53 : 9 : 10		
To ſeparate the Hides into different Aſſortments 13 : 18 : 3		
	67 : 8 : 1	
	Dol. 4212 : 5 : 7	

Which Hides came from *Leverpool* by the Ship *Induſtry*, Capt. *William Henry*, to ſaid Meſſ. *P--r L--s* and *S--s*, and I paid to them the ſame Day the Produce of Four Thouſand two hundred twelve *Dollars* five *Sols* and ſeven *Deniers*.

GIO. BATT. TAGLIAMENTE.

Taxation

CASE XXIV. N°. G.

Taxation of the Damage.

Report of the two Appraisers, appointed to value the Damage and Loss upon the Cargo of the Ship Industry, *from* Leverpool, *which Cargo was to have consisted of* 1300 *Hides in* 260 *Bundles, marked as in the Margent, but whereof only* 834 *Hides were found, very much damaged by Sea-Water, which were divided into the three following Parcels, in order to sell them immediately in Publick to prevent Increase of the Damage*, &c. &c.

30 Bundles qt. 150 Hides, but little damaged by Sea-Water, which, if they were to be reckoned according to the Invoyce at 36 *lb. Leghorn* Weight *per* Hide, would make 5400 *lb.* and at the current Price of 21 *s.* if they had been delivered in good Condition *Dol.* 945, but now damaged as they were, have produced *lb.* 5640, a $18\frac{7}{8}$ *per lb.* only *Dol.* 887 : 19 : 2, is Loss	*Dol.* 57 :	:.10
26 Bundles qt. 130 Hides, more damaged by Sea-Water, which, according to the above Calculation, if they had been in good Condition, would have rendered *lb.* 4680 of this Weight and at the currant Price of 21 *s. per lb. Dol.* 819: but being now sold with Damage, they weighed 5290 *lb.* making a $15\frac{7}{8}$ *s.* no more than *Dol.* 699 : 16 : 4, is Loss . . .	119 : 3 :	8
111 Bundles, qt. 544 Hides, black and very much damaged by the Sea-Water, which reckoned likewise at 36 *lb. per* Hide, make 19944 *lb.* this Weight, and if they had been found, would have fetched at the currant Price of 21 *s. per lb. Dol.* 3490 : 4, but in the Condition as they were, weighed *lb.* 20847, a $15\frac{1}{2}$ *s.* making *Dol.* 2692 : 14 : 9, is Loss .	797 : 9 :	3

93 Bundles,

CASE XXIV.

93 Bundles, qt. 466 Hides wanting, being flung over-board, a 36 *lb. per* Hide, are 16776 *lb.* and at the ſaid currant Price of 21 *s. per lb.* the Loſs amounts to . 2935 : 16

260 Bundles 1290 Hides Total Loſs *Dol.* 3909 : 9 : 9

And We being likewiſe preſent at the Unloading of the Lead, there were found no more than 354 inſtead of 456 Pieces, that ſhould have been a-board, conſequently 102 Pieces were wanting, which according to Invoyce muſt be calculated at 240 *lb. Leghorn* Weight each, making 24480 *lb.* which at the preſent currant Price of 21½ *Ducats* brings the Loſs to

Duc. *Dol.* 526 : 6 : 4

being . . . *Dol.* 614 : : 8

Loſs on the Hides . . . 3909 : 9 : 9

Porters aſſiſting at this Taxation . 6

Dol. 4529 : 10 : 5

N°. H. *Calculation of the General Average, that happened to the Ship* Induſtry, *Capt.* William Henry, *by the throwing over-board of* 466 *Hides and* 102 *Pieces of Lead, for the common Preſervation of the Ship, Cargo,* &c. *viz.*

1300 Hides in 260 Bundles, Damage and Loſs deducted, according to the Valuation of the Appraiſers thereunto appointed, amount to . . *Dol.* 7217

456 Pieces Lead at 240 *lb.* each, and 21½ *Duc. per* 1000 *lb.* 2745

N°. I. Half of the Ship . . . 500

¼ of the Freight 160

Dol. 10622

102 Pieces

CASE XXIV.

102 Pieces Lead flung over-board .	*Dol.* 614
466 Hides . . ditto .	2935
The Proteſt at *Leghorn* . . .	12
Law Charges	32
The Appraiſers Dues	2
	Dol. 3595

Which *Dol.* 3595 divided upon *Dol.* 10622, as the Value of this Cargo, half of the Ship and one third of the Freight make

for every Hundred . .	*Dol.* 33 : 16 : 10⅔
every Thouſand . . .	338 : 8 : 7

Calculation of the Average, as the ſame was ſettled in London *by* G - - *and* G - - *and Payment obtained accordingly from the Private Underwriters.* N°. K.

General *and* Particular Average *upon Goods* per *the Ship* Induſtry, *Capt.* Henry, *from* Leverpool *to* Leghorn, *great Part of whoſe Cargo was thrown over-board in a violent Storm for common Preſervation*, viz.

Amount of 1300 Hides as *per* Invoice	£. 1464 : 16 : 8
Ditto of 456 Pieces Lead ditto -	486 : 18 : 11
	£. 1951 : 15 : 7
For Security whereof muſt be inſured £. 2023 a 1½ *per Cent.* and Policy	30 : 11 : 5
	£. 1982 : 7

General

CASE XXIV.

General Average.

1300 Hides
834 delivered damaged

466 flung over-board

456 Pieces Lead
354 delivered

102 thrown over-board.

The Hides coſt *l.* 1464 : 16 : 8

Their Share in the Charge of Aſſurance, if to inſure *l.* 1952, requires *l.* 30 : 11, makes for *l.* 1465 - 22 : 18 : 6

l. 1487 : 15 : 2

The Lead coſt *l.* 486 : 18 : 11
Share in the Aſſurance - 7 : 12 : 6

l. 494 : 11 : 5

466 Hides were flung over-board.

If 1300 coſt *l.* 1487 : 15 is for 466. - *l.* 533 : 6

Likewiſe 102 Ps. Lead were thrown over-board, if 456 coſt *l.* 494 : 11 then 102 come to - - - 110 : 13 : 4

Particular Average.

834 Hides were delivered damaged, which in Proportion to the 1300 coſt *l.* 954 : 9, and if they had been delivered ſound, they could have been ſold as follows:

150 Hides ſhould weigh 5400 lb.
130 - - - - - - 4680
554 - - - - - - 19944

834 Hides to weigh 30024 lb. a 21 *s. per* lb. are *Dol.* 5254 : 6 and at 50 *d. per Dol.* make *l.* 1094 : 13

And according to Account Sales, they have been ſold but for
Dol. 887 : 19 : 2
699 : 16 : 4
2692 : 14 : 9

Dol. 4280 : 10 : 3 a 50 *d.* are - 891 : 15 : 6

Difference *l.* 202 : 17 : 6

Now if *l.* 1904 : 13, which they would have fetched, if ſound, looſe as above *l.* 202 : 17 : 6, then *l.* 945 : 9 the Amount of the firſt Coſt muſt looſe *l.* 176 : 18

Extra Charges
For the publick Sale is charged $1\frac{1}{4}$ *per Cent.* but ſhould be only

Amount

CASE XXIV.

Amount of the Goods flung over-board *l.* 643 : 19 : 4

Deduct for what the Ship and Freight have been obliged to pay by Order of the Court of *Piſa*:

Upon half of the Ship *Dol.* 500 and for $\frac{1}{3}$ of the Freight 160

Dol. 660 a 33 : 16 : 10 *per C.* are Dol. 223 : 7 : 3 and at 50 *d.* 46 : 10 : 7

Remains for the Cargo - *l.* 597 : 8 : 9

$\frac{3}{4}$ *per Cent.* upon *Dol.* 4280, ſince it coſts $\frac{1}{2}$ *per Cent.* Brokerage when ſold in the ordinary Way *Dol.* 32 : 2

To the Appraiſer 13 : 18 : 3

To Porters for ſpreading the damaged Hides, and Lawyers Fees 52

Dol. 98 : : 3 at 50 *d.* - - 20 : 8 : 4

The General Average amounts to - - - 597 : 8 : 9

l. 794 : 15 : 1

If *l.* 2023 looſe *l.* 794 : 15 : 1, it makes *l.* 39 : 5 : 8 *d.* upon *l.* 100.

REMARK.

According to this Regulation of Meſſ. *G.* and *G.* thvtae prie Aſſurers in *London* paid £. 39 : 5 : 8 *d. per Cent.* but when the like Demand came to be made of the L. A. C°. it was obſerved, if the Aſſured received N°. L.

CASE XXIV.

From the Aſſurers for *l.* 2023 underwrote a *l.* 39 : 5 : 8 *per Cent.* -	*l.* 794 : 15 : 1	
From the Captain, for Ship and Freight *Dol.* 223 : 7 : 3, a 50 *d.* -	46 : 10 : 7	
For the Proceed of the Goods at *Leghorn* *Dol.* 5387 : 8 : 8, a 50 *d.* -	1122 : 7 : 8	
	l. 1963 : 13 : 4	
That he would fall ſhort of the Prime Coſt, which with the Premium of Inſurance amounted to *l.* 1982 : 7, near 1 *per Cent.* or	18 : 13 : 8	
	l. 1982 : 7	

N°. M. And upon a cloſer Examination of the ſaid Calculation it was diſcovered, that the Difference aroſe from the three following Points:

Firſt, In the Poſition, where it is ſaid, If upon the Sale for *l.* 1904 : 13 there was a Loſs of *l.* 202 : 17 : 6, it muſt be the ſame alſo upon the Prime Coſt of *l.* 954 : 9, whereas this Loſs of *l.* 202 : 17 : 6 ought to have been calculated upon the neat Proceed at the Sale after the Freight and Charges were deducted, and not upon the groſs Produce of the Sale, which conſequently was to the Prejudice of the Aſſured.

Secondly, In demanding of the Aſſurers *l.* 643 : 19 : 4 for the Goods thrown over-board, which was the Coſt of them with the Premium of Aſſurance, and then dividing the ſame upon *l.* 2023, to which the Coſt and Premium amounted, beſides the 2 *per Cent.* by paying 98 *per Cent.* only, it was therefore a Prejudice to the Aſſured, that theſe 2 *per Cent.* were not likewiſe added to the *l.* 643 : 19 : 4 *d.*

Thirdly, It was to the Prejudice of the Aſſurers, to demand of them, the whole Difference from $18\frac{7}{8} : 15\frac{1}{2} : 15\frac{7}{8}$, for which the damaged Hides were ſold, to 21 *s.* which was indeed the Market Price of ſound Hides, but not for ready

CASE XXIV.

ready Money, but to pay at the uſual Time of 3 or 4 Months, and therefore the Diſcount of 3 *per Cent.* ought to have been firſt deducted from the 21 *s.* as well in this Account of the Hides, as it was in that of the Lead.

N°. N.

In order therefore to rectify this Account upon the Footing as Meſſ. *G.* and *G.* have drawn it up, there ſhould have been deducted from the Value of 834 Hides, which if ſound, would have been worth *Dol.* 5254 : 6

But fetched only - - - *Dol.* 4280 : 10

For Freight and Charges, which upon 1300 Hides would have amounted to 616 *Dol.* and is upon 834 Hides *Dol.* 395 : 4 — *Dol.* 395 : 4

Commiſſion and Brokerage 2 ½ *per Cent.* 131 : 7 — 526 : 11 — 107 — 502 : 4

Dol. 4728 : 17 — *Dol.* 3778 : 6

a 50 *d.* *l.* 985 : 3 : 6 — *l.* 787 : 4 : 7

Loſs 197 : 18 : 11

l. 985 : 3 : 6

Conſequently theſe *l.* 985 : 3 : 6 were diminiſhed exactly *l.* 197 : 18 : 11, which upon the Coſt and Premium of *l.* 954 : 9 inſtead of *l.* 176 : 18 is - - *l.* 191 : 15 : 6

And the extra Charges, as they calculate them, 98 *Dol.* a 50 *d.* are - - 20 : 8 : 4

Further they have taken no Notice, that the Freight was paid for the whole 1300 Hides, when only 834 Hides came to Hands, whereby the Aſſured looſes in the Freight *Dol.* 192 : 17, a 50 *d.* - - 40 : 3 : 6

CASE XXIV. As also by the Cost of the Goods flung overboard, *viz.*

466 Hides -	*l.* 533 : 6		
102 Pieces Lead -	110 : 13 : 4		
	l. 643 : 19 : 4		
Deduct, so much received of the Captain -	46 : 10 : 7		
		597 : 8 : 9	
Lastly the 2 *per Cent.* which fall short on *l.* 643 : 19 : 4 *d.* by receiving only 98 *per Cent.*		12 : 17 : 7	
		l. 862 : 13 : 8	
But on the other Hand there was charged too much to the Assurers on *Dol.* 5254 : 6 3 *per Cent.* *Dol.* 157 : 12 a 50 *d.* -		32 : 16 : 8	
		l. 829 : 17	

N°. O. And consequently dividing these *l.* 829 : 17 upon the Capital, being with the Premium *l.* 2023 to receive 98 *per Cent.* make $41\frac{1}{4}$ *per Cent.* which they might with Justice have demanded of the Assurers.

N°. P. But to make the Account more short and plain, let us say, If the Whole had arrived in Safety, the 1300 Hides at 36 lb. would have weighed lb. 46800, a 21 *s.* *l.* 49140, a 6 *l.*

Dol. 8190

Deduct 3 *per Cent.* for prompt Payment 245 : 14

Dol. 7944 : 6

456 Pieces Lead, a 240 lb. are 109440 lb.

a $21\frac{1}{2}$ *s.* - -	*Duc.* 2352 : 19	
at $16\frac{2}{3}$ *per Cent. Agio* -	392 : 3	
	Dol. 2745 : 2	
Deduct from *Dol.* 232 : 14 : 2 a 2 *per Cent.* -	2506 : 7 : 10	79 : 18
a 3 *per Cent.* - For prompt Payment -		
		2665 : 4
	Dol. 10610	

Freight

CASE XXIV.

Freight and Primage -	*Dol.* 538 : 14		
Unloading, the Hides, 59 Ps. 2*s.*	88		
the Lead, 92 Ps. -	122		
Commission a 2 *per Cent.* -	212 : 4		
Brokerage a $\frac{1}{2}$ *per Cent.* -	53 : 1		
		1013 : 19	

In Case there had been no Damage, nor any Thing thrown over-board, the neat Proceed would have been - - - - - - *Dol.* 9596 : 1

But now it has produced only *Dol.* 5387 : 8 : 8

General Average received from the Captain - - 223 : 7 : 4

5610 : 16

Loss *Dol.* 3985 : 5

Consequently upon *Dol.* 9596 : 1 were lost *Dol.* 3985 : 5

a 50 *d.* £. 1999 : 3 : 6 £. 830 : 5

Which upon the Whole differs but a Trifle, and brings it to 41 $\frac{1}{25}$ *per Cent.* to be paid upon £. 2023.

Accordingly the Assured would receive from the Assurers for £. 2023, a 41 $\frac{1}{25}$ *per Cent.* - - - - £. 830 : 5

From the Captain - - - 46 : 10 : 7

From *Leghorn* for the neat Proceed Dol. 5387 : 8 : 8, a 50 *d.* - - 1122 : 7 : 8

£. 1999 : 3 : 3

Which agrees with what he ought to receive according to the above Account, if the same had been made right.

Of this the *London Assurance Company* was not remiss to acquaint him, but apprehending, that their Right in the Manner of settling the general Average at *Leghorn* had not been sufficiently defended, they agreed to pay him 39 *per Cent.* N°. Q.

And

CASE XXIV.

And it was not without good Reaſon they alledged againſt the Aſſured, that he did not make his Objections in the Court of *Piſa*,

N°. R.

Firſt, Againſt the letting the Goods bear a larger Share of the general Average, than for what they produced neat at *Leghorn* after deducting the Freight and Charges.

Secondly, In not inſiſting on better Proof of the real Value of the Ship, which upon the bare Word of the Captain is againſt all Probability ſet down at an even Sum of 1000 Dollars only, and for no more than 160 Doll. Freight, for it ought to have contributed for $\frac{1}{3}$ of its Brutto-Freight, which apparently could not be ſo little.

Thirdly, As the Court of *Piſa* decreed, that the full Freight ſhould be paid, notwithſtanding near one third Part of the Cargo was flung over-board, it therefore admitted of no Manner of Doubt, nor could it have been refuſed, if properly repreſented, to include this wanting Freight in the General Average, and to make the Ship and Freight itſelf contribute thereto, in Proportion to their Value.

N°. S.

Upon this Footing the Calculation of the General Average would have ſtood in the following Manner:

The whole Value of 1300 Hides at 21 *s.* was		*Dol.* 8190
Deduct the Damage - - -		973
		Dol. 7217
The full Value of the Lead - -		2745
		Dol. 9962

From which likewiſe muſt have been deducted

The Freight - -	*Dol.* 538 : 14	
For unloading - -	88	
ditto - -	122	
prompt Payment, 2 and 3 *per Cent.* - -	285 : 14	
ditto - -	79 : 18	
		1115 : 6
		Dol. 8846 : 14

For

CASE XXIV.

For half the Value of the Ship -	*Dol.* 500	
For $\frac{1}{3}$ of the Freight - - -	160	
	Dol. 9506 : 14	

Whereupon to be divided

The Value of the Hides flung over-board	*Dol.* 2935	
Ditto of the Lead - -	614	
	Dol. 3549	
Deduct 3 *per Cent.* Discount -	106 : 10	
	Dol. 3442 : 10	
Extra Charges - - -	46	
Freight of Goods thrown over-board -	192 : 17	
	Dol. 3681 : 7	

And accordingly upon the Dol. 660 for Ship and Freight should have been allowed 259 Dol. instead of Dol. 223 : 7 : 3, and as in all Probability half the Value of the Ship should have been set at Dol. 1000 instead of 500 Dollars, in Consideration of which several Errors the Deduction of $2\frac{1}{20}$ *per Cent.* was allowed out of the $41\frac{1}{20}$ *per Cent.* to the *L. A. C.* and the Payment of the Loss settled at 39 *per Cent.*

CASE

CASE XXV.

CASE XXV.

A Regulation made at Leghorn *by way of a gross Average for the Ransom of a Cargo of Wheat from* London *in the last War; thereby shewing,* 1st, *What was paid by the Insurers at* Leghorn; 2dly, *What was paid by the Insurers at* London.

Most Illustrious Lords! Most respectful Patrons!

No. A. WE the hereafter-named Calculators, nominated and appointed by Your Illustrious Lordships to make up the Account of Average of the Ship called the *Five Brothers*, *Charles Alden*, Master, navigating under *British* Colours, do hereby make our Report in relation to the Charges disbursed by the said Master for the ransoming and recovering of his said Ship and Cargo from Capt. *Bompard*, Commander of the *French* Man of War called the *Conquerant*, who had taken the same in the Gulf of *Gibraltar*; as also in relation to the Gratuity allowed by Your Illustrious Lordships on Account of the said Ransom made for the general and common Good to be proportioned, together with the Costs of this Cause and our Commission Fees, on the Amount of the Cargo of Wheat which is arrived and consigned to Messrs. *Robert Perryman* of *Leghorn*, and on the full Value of the said Ship and her Appurtenances, and on two Third Parts of the Freight agreed on, for carrying the said Cargo of Wheat from *London* to *Leghorn* aforesaid, which accordingly we do report as follows:

Hereunder is the Specification of the Amount of the Cargo of the Ship and her Appurtenances, and of Two Thirds of the Freight.

There were shipped on board in *London*, consigned to Messrs. *Robert Perryman* and C°. 1578 Quarters of *English* Wheat, valued

valued in the Whole, as it appears by Your Illuſtrious Lordſhips Decree of the 30th of *May* laſt paſt, at *Dol.* 12331 : CASE XXV.

The Ship and her Apparel, according to your ſaid Decree, is rated at -		8000 :
The Two Thirds of the Freight, which is in all 433 Dollars, amount, purſuant to the Decree, to - -		2955 :
	Dol.	23286 :

Hereafter follows the Specification of what is to be re-partitioned in Average.

For the Amount of 1600 *l. Sterl.* for which the ſaid Capt. *Alden* gave a Bill of Exchange to the ſaid Capt. *Bompard* payable by the ſaid Meſſrs. *R*---- *P*——— and C°. liquidated and rated, as it is expreſſed in the ſaid Decree, at - - *Dol.* 7452 :

For a Gratuity and Recompence allowed to the ſaid Capt. *Alden*, being comprehended therein what is due to the ſecond Mate, ſent and left on board Capt. *Bompard*'s Ship as an Hoſtage, according to the ſaid Decree -		1640 :
For Conſul's Fees paid at *Leghorn* -		7 :
For the Charges of the Law-Suit taxed		66 :
For our Commiſſion in regard of the Taxation N B. 42. - -		2 :
	Dol.	9207 :

Which 9207 Dollars being the Amount of the ſaid Gratification, Ranſom and other Charges abovementioned are to be proportioned on the 23286 Dollars, the Valuation and Amount of the Cargo of Wheat, of the Ship and her Appurtenances, and Two Third Parts of the Freight, and are as follows, *viz.*

On each 100 Dollars -	*Dol.*	39 : 10 : 9 $\frac{1}{2}$	N°. B.
On every 1000 Dollars -		395 : 7 : 9	

CASE XXV.

This is what we have to report to your Moſt Illuſtrious Lordſhips, in Conformity to your Decree of the 30th Day of *May* laſt paſt, wherewith we are with profound Veneration,

Your Moſt Illuſtrious Lordſhips

Moſt devoted and humble Servants

GIO. BAT. FIESOLE,
GIO. BAT. BERRETTI.

June 1ſt, 1748.

THE Moſt Illuſtrious Lords, the Conſuls of the Sea of the City of *Piſa*, ſitting in Court, *&c.* After having ſeen the the foregoing Calculation and the Contents thereof with whatever elſe, *&c.* And deliberated what was to be deliberated, have approved, and do will and approve of the ſame in every Part, commanding the Obſervance thereof. *Et &c. non ſolv.* but in all, *&c.* In the Preſence of

RANIERI MAGNOLFI, and GAETANO CURRINI, } Witneſſes.

CAM. PIOMBANTI,
Secretary.

Moſt Illuſtrious Lords, much reſpected Patrons!

N. C. IN Obedience to Your Lordſhips Decree of the 7th laſt paſt, We the underwritten Examiners, having repaired to be preſent at the unloading of the Wheat brought into this Port by the Ship called the *Five Brothers*, commanded by the *Engliſh* Captain *Charles Alden*, coming from the River of *London* conſigned to Meſſrs. *R. P.* and C°. *Engliſh* Merchants trading in this City, do hereby make our Report to Your Lordſhips: That there have been unloaden from out of the ſaid Ship in all and in the Whole 6088 $\frac{2}{3}$ Sacks, which being in every Parcel ſo as they came out of the Ship, examined and ſearched by us, we have found the following Loſſes and Damages, which we now mention as follows:

CASE XXV.

85 1/3 Sacks of Wheat aforesaid intirely spoiled and stinking, made thus by the Sea-Water, and not being worth the Charges to have the same restored, we ordered the same to be publickly sold here, when they fetched 9 *l.* 4 *s.* *per* Sack: And whereas in its good Condition they could have been sold at 19 *l.* *per* Sack, there is found 9 *l.* 6 *s.* *per* Sack Average, which amounts to 793 *l.* 12 *s.* a 6 *l.* *per* P. - *Dol.* 132 : 5 : 4

11 1/3 Ditto, still worse of Quality and stinking, being spoiled by the Sea-Water as abovesaid, and sold likewise in public for 7 *l.* *per* Sack, which at the Price abovesaid of 19 *l.* *per* Sack, if they had arrived in a good Condition, makes an Average of 12 *l.* *per* Sack, which amounts to 22 : 13 : 4

448 2/3 Ditto, found wetted and moist by the Sea-Water, with some mixed Grains of rotten and spoiled Wheat, whereof we rate the Average at 1 *l.* 1/2 *per* Sack, which makes - 112 : 3 : 4

5543 2/3 Ditto, without any Damage or Average at all - - - : :

6088 2/3 Sacks of Wheat aforesaid, with a Damage of - *Dol.* 267 : 2 :

And for 1545 Sacks which are damaged to the Degree following:

632 Sacks quite rotten and torn to Rags, of no Value, which we rate at 1 *l.* *per* Sack, the Average amounts to 105 : 6 : 8

745 Ditto damaged and rotten, whereof we rate the Damage at 10 *s.* *per* Sack, makes - - 62 : 1 : 8

168 Ditto deficient or missing, which at 1 *l.* *per* Sack amount to - 28 : :

1545 Sacks. The whole Average we declare to be - *Dol.* 462 : 10 : 4

CASE XXV.

We therefore do report that all the Damages and Average on the ſaid Cargo of Wheat amount to 462 Dollars, 10 Soldi, and 4 of 8*rs*.

This is what we are obliged to report to Your Moſt Illuſtrious Lordſhips according to our Experience and Conſcience, to whom we pay our greateſt Reſpects, and are

Your Moſt Illuſtrious Lordſhips

Moſt humble and devoted Servants,

Leghorn, June 5, 1748.

SANTI DU TREMOUL,
GIO. SEBASTIANO BICHI.

June 6th, 1748.

The moſt Illuſtrious Lords Conſuls of the Sea, in the City of Piſa, *ſitting in Court*, &c.

N°. D.

AT the Requiſition of Meſſrs. *R*—— *P*——— and C°. *Engliſh* Merchants of the City of *Leghorn*, in the Cauſe of Liquidation of Damages on the hereafter-mentioned Goods, do approve and publiſh the Report and Eſtimation of the Average found on the Cargo of Wheat arrived from *London* on board of the Ship the *Five Brothers*, commanded by the *Engliſh* Capt. *Charles Alden* conſigned to the ſaid Requirants; and do further fix the Term of five Days to Meſſrs. *Lazaro Damiani* and C°. and to the ſaid Capt. *Alden*, to ſay and to alledge what they have to object to the ſame, ſo as the ſame is made and ſent in by Meſſrs. *Santi du Tremoul*, and the Conſul *Gio. Sebaſt. Bichi*, the Examiners conſtituted by another previous Decree of their Lordſhips whereby they rated the Fee due unto them for their ſaid Report, to the Sum of 6 golden Ducats, one Moiety for each of them. All which, *&c.* in the Preſence of

RANIERI MAGNOLFI, and GAETANO CURRINI, } Witneſſes.

CAM. PIOMBANTINI,
Secretary.

On

CASE XXIII.

On the 15th Day of *June*, 1748.

The moſt Illuſtrious Conſuls of the Sea, in the City of Piſa, *ſitting in Court*, &c.

AT the Requiſition of Meſſrs. *R*---—— *P*——— and C°. *Engliſh* Merchants of the City of *Leghorn*, in the Cauſe of Liquidation of the Damages depending between the ſaid Gentlemen on the one Part, and Capt. *Charles Alden* and *Lazaro Damiani* and the Inſurers on the other Part, ſeeing that by the ſaid Capt. *Charles Alden* and *Lazaro Damiani* and other Conſorts in this Cauſe, no Objections or Allegations have been made or brought in, within the Term unto them prefixed, againſt the ſaid Report and Eſtimation made and ſent up by Meſſrs. *Santi du Tremoul* and Conſul *Gio. Sebaſtiano Bichi* relating to the Damages on the Cargo mentioned in this Cauſe, have declared that the ſame ſhall be deemed as approved of by both Parties. All which, *&c.* in the Preſence of

RANIERI MAGNOLFI, and GAETANO CURRINI, } Witneſſes.

CAM. PIOMBANTI, Secretary.

In the Name of God, *Amen.*

WE *Cheralius Quintilio Galliotti* and *Niccolo Cambi*, Nobles of *Florence*, and Conſuls of the Sea of *Piſa*, ordinary Judges in Civil, Maritime, Mercantile, and mixt Cauſes, for his Imperial Majeſty.

In the Cauſe of Aſſurance, or particular Average between Meſſrs. *R*----- *P*----- and C°. in their reſpective Qualities hereafter mentioned, the Inſured, on the one Part, and *Paul Bonfil* and others in this Cauſe, the Inſurers on the other Part.

Having

CASE XXV.

Having ſeen the Demands of the ſaid Meſſrs. *R*--- *P*--- and C°. in their reſpective Qualities, with divers Policies of Inſurance produced and exhibited on the 3d of *July* 1748, and the Tenor thereof.

Having ſeen the Petition of the ſaid Meſſrs. *R*--- *P*--- exhibited in Writing on the 16th ditto, with its Tenor.

Having ſeen the Exceptions drawn in Writing by the ſaid Meſſrs. *Bonfil* and Conſorts: exhibited on the 29th of *July* with the Tenor thereof.

Having ſeen an Inſtrument of the ſaid Meſſrs. *R*--- *P*--- and C°. in their reſpective Qualities, with the produced original Invoice, Copies of Letters, and Accounts exhibited on the 9th of *Auguſt*, and the Tenor thereof.

Having ſeen a written Reply of the ſaid Meſſrs. *R*--- *P*--- and C°. exhibited the 13th ditto, and its Tenor.

Having ſeen an Inſtrument of the ſaid *Bonfil* and Conſorts exhibited on the 17th ditto, with the Tenor thereof.

Having ſeen the Summons to hear Sentence to be pronounced on this preſent Day, of the Date hereunder written. And having in general obſerved all that ought to be obſerved, and conſidered what ought to be conſidered.

After having invoked the the moſt Holy Name of God, we do declare, pronounce and decree: That the Allegations and Matters explained, claimed and demanded in Behalf of the ſaid Meſſrs. *R*--- *P*—— and C°. the Inſured, not only for themſelves and for their Account, in relation to the One Half Part or Moiety belonging unto them, of a Cargo of Wheat, coming from *London* unto them conſigned, and arrived at *Leghorn* in the *Engliſh* Ship the *Five Brothers*, Capt. *Charles Alden*, Commander; as likewiſe as Commiſſioners, and for the Account of Meſſrs. *V*——, *P*——, and *A*——, of the ſaid City of *London*, relating to the other Half Part or Moiety of the ſaid Cargo belonging unto them; againſt the ſaid Meſſrs. *Saul Bonfil* and many others named in the Acts as Inſurers of the whole Amount

Amount of the firſt-mentioned One Half Part or Moiety valued in the reſpective Policies of Aſſurance at 5500 Dollars of 8 *rs.* and of the Amount of 1500 Dollars of 8 *rs.* of the other ſecond Half or Moiety, were and are juſt and true, and can be lawfully claimed and demanded in the Manner alledged, and that they acordingly, in the Form hereafter mentioned, ought to be granted and yielded. Wherefore we do declare, That the ſaid Meſſrs. *Saul Bonfil* and Conſorts in this Cauſe, the Inſurers, ought to be condemned; and we do hereby condemn them, that they ſhall concur to the Amount of the reſpective Sums inſured by each of them as aboveſaid, amounting in all and from all, to the Sum of 7000 Pieces of 8 *rs.* as alſo the ſaid Meſſrs. *R*--- *P*--- and C°. in their Quality of Attornies, and impowered by the ſaid Meſſrs. *V*——, *P*——, and *A*—— for the Amount of 4000 Dol. being the Valuation of the Reſt of the One Half or Moiety of the ſaid Cargo of Wheat, for their Account, which is not inſured in *Legkorn*, for Refaction and to make good, all and every one of them by Sols and Livres, and on a particular Average, the Loſs and Damage ſuffered by the ſaid Meſſrs. *R*--- *P*--- and C°. reſpectively in the ſaid Cargo of Wheat. Notwithſtanding they by Virtue of the foregoing Decree of our Court, dated on the 30th of *May* laſt paſt, were obliged by the ſame to come into a general Average, to ranſom the ſaid Ship from out of the Hands of the Commander of a *French* Man of War, who had taken her, and for a Gratuity granted to the ſaid Capt. *Alden*, who made the ſaid Ranſom, as alſo to contribute for the Damage and wetting cauſed by the Sea-Water to the ſaid Wheat found at the Time of her unloading the ſame at *Legkorn:* All which, according to the Calculation and Account of the general Average annexed to the ſaid preceeding Decree, and according to the Valuation made by ſundry ſkillful Examiners of the ſaid Damage and Wetting cauſed by Storms and Tempeſt, which is already approved of by another Decree of this Court, dated on the 15th Day of *June* laſt paſt, which we declared to amount, together with the Coſts of the ſaid Examination, to 5354 Dollars, 11 Sols, and 2 of 8 *rs.* deducting however from the ſaid total Sum of Dol. 5354: 11: 2 in Favour of the ſaid Inſurers of the ſaid Meſſrs. *R*--- *P*--- and C°. for themſelves, all that may come from the Contribution,

CASE XXV.

N°. F.

CASE XXV.

tribution, in Concurrence with the ſaid Inſurers of Meſſrs. *C*--- *B*——, who is an Inſurer of the ſaid Meſſrs. *R*—— *P*—— and C°. for their Account for the Profit, by him ſigned for 500 Dollars of 3 *rs.* to make good the ſaid Profit with the Refaction of ſuch a Proportion of the ſaid Wheat, which, according to the Valuation made thereof at *Leghorn*, in relation to this preſent Average, in Livres *per* Sack, as far as it exceeds the prime Coſt, and the neat Charges of the one Moiety belonging to the aforeſaid Meſſrs. *R*--- *P*--- and C°. in Property. To whom, for their Re-imburſement and Indemnification, we do reſerve their Actions and Pretenſion whatſoever againſt the ſaid Meſſrs. *B*———; ordaining, as we do hereby ordain, that the Repartition abovementioned of the ſaid Sums for Damage (the ſaid Deduction excepted) and the neat Coſt and Charges of this preſent Court, ſhall be made in a juſt Calculation of what is aforeſaid in due Form, by Meſſrs. *Gio. Battiſta Fiſole* and *Gio. Battiſta Berretti*, whom we choſe for that Purpoſe as experienced Calculators, to make their Report thereof, with Reſervation for the Approbation of this our Tribunal, and pronouncing, ſo we do hereby pronounce, in Favour of the ſaid Meſſrs. *R*--- *P*--- and C°. in their reſpective Characters, againſt all and every one of the ſaid Gentlemen Inſurers named in the ſaid reſpective Policies, for the reſpective Proportion to each of them relating, and do grant unto them all neceſſary, lawful and permitted Power of Execution, according to Law. Thus, *&c.* not only, *&c.* but in all, *&c.*

This preſent Decree was and is pronounced by the ſaid Illuſtrious Lords the Conſuls of the Sea of *Piſa* ſitting in Court; and is read and publiſhed by me the underwritten, on this 23d Day of *Auguſt*, 1748, in the Preſence of

RANIERI MAGNOLFI, and GAETANO CURRINI, } Witneſſes.

CAM. PIOMBANTI,
Secretary.

We

CASE XXV.

WE the underwritten Doctors and Advocates here in *Leghorn*, do certify that Dr. *Camillo Piombanti*, by whoſe Hand this preſent Copy is ſigned, is, as he ſtiles himſelf, Secretary of the Court of the Illuſtrious Lords the Conſuls of the Sea of *Piſa*; and this we do atteſt as being intirely well known to us, and by the Knowledge we have of his Firm and Signature, and in Teſtimony, *&c.*

I Dr. ANDROMACO MONTIGIANI,
I Dr. GIO. FRANCO NIBBI.

I The Underwritten do atteſt that the foregoing Atteſtation has been ſigned and ſworn to in due Form before me, by Dr. *Andromaco Montigiani* and *Gio. Franco Nibbi*. In Teſtimony whereof, *&c.*

Leghorn, Sept. 12, 1748.

(L. S.) JOANNES BAPTISTA GAMERRA,
Not. Publ.

WE the underwritten Merchants here in *Leghorn* do atteſt, that the above-written Dr. *Gio. Battiſta Gamerra* is, as he ſtiles himſelf, a Notary Public, and that to his Firm and Signature full Faith and Credit is given in Court and without; and in Teſtimony thereof, *&c.*

ENRICO CHRISTIANO LUTYENS,
GUGMO. AIKMANN.

CASE XXV. N°. G.

Illuſtrious Lords, reſpected Patrons!

WE the underwritten ſkillful Calculators, choſen and appointed by your Magnificences, to draw up a Calculation of the particular Damage ſuffered on the Cargo of Wheat arrived from *London* at *Leghorn*, conſigned to Meſſrs. *R*----- *P*------ and C°. in the *Engliſh* Ship the *Five Brothers*, Capt. *Charles Alden*, Commander: One Moiety of which ſaid Cargo belongs to the ſaid Meſſrs. *R*—— *P*-------- and C°. and the other Half or Moiety to Meſſrs. *V*------, *P*———, and *A*------ of *London*; do make our Report: That whereas the ſaid Damage, as appears by the Demonſtrations, produced in the Acts, and by the Tenor of Your Decree, bearing Date 29th of *Auguſt* laſt paſt, doth amount in the Whole to the Sum of Dol. 5354 : 11 : 2 of 8 *rs.* together with the *further Coſts of this Cauſe and our Commiſſion*, a juſt Repartition in Livres and Shillings is to be made by us, of the one Moiety thereof on Meſſrs. *Paul Bonfil, Moiſe Vita Franco* and the Reſt of the Inſurers, in Favour of the ſaid Meſſrs. *P*----- and C°. for their own Concern, as ſigned and underwritten in the Policy of Aſſurance, from the 29th Day of *December* 1747, to the 4th of *January* following, as appears by the ſame Proceedings; as alſo at the ſame Time on Meſſrs. *B*---- and *B*------, who are the Inſurers of the Profit, in relation to that Moiety of the Cargo which belongs to the ſaid Meſſrs. *R*--- *P*--- and C°. each of them in Proportion to their reſpective Sums of Inſurance, amounting in all to 6000 Dollars of 8 *rs.* as likewiſe of the other Moiety of the ſaid Damage and Coſt, on Meſſr. *Nicolao Maria Cavagnano*, and thoſe other Inſurers that are mentioned and have ſigned another Policy of Inſurance, dated the 11th of *January* aforeſaid, the inſured Sums whereof amount in all to Dol. 1500; as alſo further on the ſaid Meſſrs. *P*——— and C°. of this Place, as Attornies and Commiſſioners of the ſaid Meſſr. *V*----, *P*----- and *A*-----, of the ſaid City of *London*, for and on Account of the Remainder of the Amount of the ſaid Moiety of the Cargo, unto them belonging, which is not inſured at *Leghorn*, and amounts to Dol. 4000 of the ſame Coin: All which we do accordingly proportion as follows:

Here

CASE XXV.

Here follows a Specification of the reſpective Sums underwritten and expreſſed in the Policy of Inſurance aforeſaid, from December 29*th*, 1747, *to the* 4*th of* January *following, together with thoſe of Meſſrs.* Bowen *and* Berenbergh, *the Inſurers of the Profit, and who muſt concur in the Refaction of the Moiety of the ſaid Damages.*

Mr. *Paul Bonfil*, for	-	*Dol.* 700
Moiſe Vita Franco	-	500
Antonio Valentin and *Comp.*	-	300
Nadal and *Comp.*	-	400
The Widow *Mezrell* and *Jacomo Champlan*		200
Mr. *Ambroſio Galeano Bonaini*	-	300
Lazaro Damiani	- -	500
Meſſrs. *Holden* and *Jermy*	- -	800
Matteo and *Luvigi Blaquiere*	- -	300
Giov. Amato Chovet	- -	300
Enrico Scroope	- -	300
Cornelio Berenberg	-	300
Gio. di Martino	- -	300
Antonio Belaſiſe	- - -	300
Bowen and *Berenbergh*, Inſurers of the Profit		500
Make		*Dol.* 6000

Specification of the Amount of the Moiety of the Damage, Coſts, &c. *to be re-partitioned over the ſaid Gentlemen Inſurers:*

The ſaid Damages, amounting in the Whole as aforeſaid to *Dol.* 5354 : 11 : 2 neat, the Moiety thereof is	*Dol.* 2677 : 5 : 7
The one Moiety of the Coſts of this Suit, is taxed to be - -	20 : 2 : 5
Our Commiſſion for the one Half is -	1 :
Make	*Dol.* 2698 : 8

CASE XXV.

Which ſaid 2698 *Dol.* 8 *s.* being the Amount of the one Moiety of the Damages and Coſts, and repartitioned on the aforeſaid total Sum of 6000 Dollars of the above ſpecified reſpective Sums comes out as follows, *viz.*

N°. H.

On each one Hundred Dollars	-	*Dol.* 44 : 19 : $5\frac{1}{2}$
one Thouſand	-	449 : 14 : 7

[a]

Here follows a Specification of the inſured Sums expreſſed in the other Policy of Jan. 11. $174\frac{7}{8}$. *together with the remaining Riſk of Meſſ.* R-- P-- *and Comp. in their ſaid Quality not inſured in* Leghorn, *viz.*

Mr. *Nicolo Maria Cavagnano*, for		*Dol.* 800
Meſſ. *Boiſſier Cholmly* and *Comp.* for	-	400
Mr. *Giov. Batt. Negrolini*, for	-	300
Meſſ. *R-- P--* and *Comp.* in their ſaid Quality, for the Reſt, not inſured at *Leghorn* - - -		4000
make		*Dol.* 5500

[a] But as theſe beforementioned Dol. 5354 : 11 : 2 conſiſted of

Dol. 4875 : 10 groſs Average a Dol. 39 : 7 : 9 on the neat Value of the Loading the ſame yielded at *Leghorn*, being *Dol.* 12331

and

462 : 10 : 4	as Damage received -	462 : 10
16 : 10 : 8	for Charges of Law -	16 : 10
Dol. 5354 : 11		*Dol.* 12810

So the above Regulators at *Leghorn* for the

Dol. 2677 : 5 : 4
29 : 2 : 5
1

} Dol. 2698 : 8 on the one Moiety, ought to have charged it on - - *Dol.* 6405

And thus make the Owners of the Cargo bear their Proportion of 405 Dollars themſelves.

Here

CASE XXV.

Here follows a Specification of the one Moiety of the ſaid Damages, to be repartitioned over the ſaid Gentlemen Inſurers.

One Moiety of the ſaid Damages as afore mentioned amounts to - - -	*Dol.* 2677 :	5 :	7
One Moiety of the Charges of this Cauſe	20 :	2 :	5
One Moiety of our Commiſſion -	1		
make	*Dol.* 2698 :	8	

Which 2698 Dollars 8 Sh. the Amount of one Moiety of the Damages and Coſts aforeſaid being on the 5500 Dollars the Amount of the ſaid inſured Sums and in Proportion on the Remainder of the Riſk, which is not inſured, comes out as follows, *viz.*

On every one Hundred Dollars -	*Dol.* 49 :	1 :	2
one Thouſand -	490 :	11 :	8

N°. L.

This we do report to Your Illuſtrious Lordſhips in Conformity to your Decree of the 23 Day of *Auguſt* laſt paſt, and thus paying our moſt profound Reſpect, we are

Your Lordſhips

Moſt humble and moſt obliged Servants

Piſa, Sept. 5th 1748.

GIO. BATT. FIESOLE, Calculator.
GIO. BATT. BERETTI, Calculator.

September 7th 1748.

N°. K.

THE Illuſtrious Conſuls of the Sea of the City of *Piſa* ſitting in Court, upon the Cauſe of Inſurance, or particular Average, between Mſſrs. *R*—— *P*—— and Comp. the Inſured, relating to a Cargo of Wheat by the Ship the *Five Brothers*, Captain *Charles Alden*, on the one Part, and Mr. *Paul Bonfil* and other Inſurers, on the other Part.

After having conſidered, what was to be conſidered, do decree, nevertheleſs without Prejudice of Mſſrs. *B*——*n* and *B*——*g*, who have been ſummoned to appear to this Decree, and do hereby approve of the Calculation, made purſuant to their Lordſhips

CASE XXV.

ſhips former Sentence, of the 23 Day of *Auguſt* laſt paſt by thoſe ſkillful Perſons, named in the ſaid Sentence, and do command the Gentlemen Inſurers mentioned in the ſaid Calculation to obſerve the ſame, excluſive however for the preſent of the ſaid Meſſ. *B---n* and *B---g*, as above mentioned, againſt whom they do reſerve to the ſaid Meſſ. *R-- P--* and Comp. their Actions, and without Prejudice to thoſe Claims, which they have againſt the other Gentlemen Inſurers, to make good the Deficiency, which they may ſuffer by the ſaid Meſſ. *B---n* and *B----g*, againſt whom they do reſerve to declare by a future Decree, what the Laws require, all which in every Reſpect by theſe preſents, *&c.*

RANIERI MAGNOLFI, and GAETANO CURRINI, } Witneſſes.

CAMILLO PIOMBANTI,
Secretary.

WE, the underwritten Doctors and Advocates of this City of *Leghorn*, do certify, that Dr. *Camillo Piombanti*, by whoſe Hand this preſent Copy is ſigned, is as he ſtiles himſelf Secretary to their Illuſtrious Lordſhips, the Conſuls of the Sea of *Piſa*, and this we do atteſt becauſe it is intirely and perfectly well known to us, by the frequent Knowledge we have of his Firm and Signature. In Teſtimony whereof, *&c.*

I *ANDROMACO MONTIGIANI*, Dr.
I *GIOVANI FRANC. NIBBI*, Dr.

THE foregoing Atteſtation has been confirmed and ſworn to in due Form by the Gentlemen and Doctors, *Andromaco Montigiani* and *Giovani Franc. Nibbi*, before me, in Teſtimony whereof, *&c.*

JOANNES BAPTISTA GAMERRA,
Sept. 12. 1748. Not. Publ.

(L. S.)

We,

CASE XXV.

WE, the underwritten Merchants of this City of *Leghorn*, do certify, that the above ſigned Dr. *Giov. Battiſta Gamerra* is as he ſtiles himſelf a Notary Publick, and that to his Firm and Signatures full Faith and Credit is given in Court and without, and in Teſtimony whereof, *&c.*

ENRICO CHRISTIANO LUTYENS,
GUGLIELMO AIKMAN.

Amount of the Invoice of 1578 *Quarters of Wheat* per *the Five Brothers*, Capt. *Alden.* N°. L.

£. 2014 : 18 : 6 is for our Half -		£. 1007 : 9 : 3
£. 800 inſured in *London*, a 10 Guineas *per cent.*	£. 84 : 4 : 6	
Dol. 1500 ditto in *Leghorn*, a 8 *per cent.* are with Commiſſion and Brokerage Dol. 138 : 10, a 51½ -	28 : 14 : 5	
		112 : 18 : 11
		£. 1110 : 8 : 2

To cover £. 1007 (being the Prime Coſt) ſo that in Caſe of an Accident the Inſured may be no Sufferer, and allowing 10 *per cent.* Premium and 2 *per cent.* Deduction, the Sum inſured muſt have been £. 1145.

Surveyor's Trouble and Law Charges at *Piſa* - - -		*Dol.* 16 : 10
Law Charges regulating the Average -		42 : 4 : 10
To ſo much the Cargo contributed for Ranſom and Salvage, as *per* the Magiſtrates Decree - - -		4875 : 10 : 10
Charges going to *Piſa* to ſollicit the Suit -	Dol. 106 : 10	

Law

CASE XXV.

Law Charges at *Pisa* - 257 : 5 : 3
Ditto in *Leghorn* - 103 : 10

£. 467 : 5 : 3
at 115 *s.* 81 : 9 : 11

Dol. 5015 : 15 : 7

Our Half *Dol.* 2507 : 17 : 8

Messl. *R*-- *P*-- and Comp. charge in Account currant for their Commission and extra Trouble in appearing and proceedings against the Captain, who detained and claimed the Whole as his Property, pretending that the Ransom was for his Benefit - - 80 : 18 : 11

Dol. 2588 : 16 : 7

a 51½ *d.* £. 555 : 10 : 4

Charges for translating the Papers and Copies from *Leghorn* £. 3 : 17
Postage of Letters - 2

5 : 17

On £. 1145 is £. 48 : 19, a 10 *per cent.* £. 561 : 7 : 4

N°. M.

Demand of

V. P. A.

London, the 31 *December* 1748.

ADjusted at *London* £. 600 insured on Goods in the *Five Brothers*, Capt. *Samuel Alden*, from *London* to *Leghorn*, taken by the *Conquerant* Man of War, a 48 *per cent.*

£. 288

Deduct our Commission ½ *per cent.* 1 : 8 : 10

N°. N.

£. 100 signed by *C. H.*
100 - by *T. K.* } - £. 286 : 11 : 2

G. G.

REMARKS.

CASE XXV.

REMARKS.

As it appears that this Cargo yielded a Profit at *Leghorn*, undoubtedly that Profit ought to have born its proportional Part of the Ransom, for if it had not been ransomed, that Profit would not have been obtained. N°. O.

The *Leghorn* Calculators began right enough in the Account of the general Average to make the Cargo contribute for its neat Value there, being 12331 Dollars, a Dol. 39 : 10 : 9⅓ *per cent.* but (as already observed in the Note at the Bottom of Page 302.) they were in the wrong in charging the Half of this Ransom on the Sum of 6000 Dollars, for it might have happened, that one Half of the Cargo had yielded 10000 Dollars neat, and in such Case would it have been reasonable that the Proprietor should go entirely free from contributing for the 4000 Dollars clear Profit? And by this it appears very evidently, that the *London* Adjustment at 48 *per cent.* was likewise wrong, or Part of the Wheat must have been sold at lower Prices than what the foregoing Papers declare. N°. P. N°. Q. N°. R.

If we compute 6088⅔ Sacks of Wheat at £. 19, is £. 115684⅔, which at 6 s. makes *Dollars* 19280 N°. S.

Freight - -	*Dol.* 4433	
Primage 10 *per Cent.* -	443	
Charges of Landing and Commission - -	1594	
		6470
There remain	*Dol.*	12810

It will then nearly tally with the Contribution made thereon in the gross Average, which N°. T.

on Dol. 12331 at Dol. 39 : 10 : 9⅓ make *Dol.* 4875 : 10 : 10

CASE XXV.

Brought over *Dol.*	12331		*Dol.* 4875 : 10 : 10	
Add thereto	462 : 10 : 4	for particular Damage on the Wheat	479 : : 4	
and	16 : 10	particular Charges		
So that on Dol.	12810 : : 4	the Ransom and Damage amount together to	*Dol.* 5354 : 11 : 2	

N°. U. Which comes out at Dol. 41 : 16 : 3 *per Cent.* and corresponds with Dol. 40 : 19 : 3 *per Cent.* for £. 100 to pay 98, and is what in Reality the Insurers ought to have paid, and no more.

CASE XXVI.

CASE XXVI.

Shewing how a General Average was regulated by the Commissioners of the Assurance Company of Amsterdam.

ATTESTATION and Account delivered to the Company by *M.* and Sons, concerning the Loss on the Ship called the *Vreede*, Capt. *Gerrit Cornelis Ranes*, on his Voyage from *Smirna* to *Amsterdam*, and of the extraordinary Charges occasioned thereby, to be proportioned in a general Average on the Ship and Cargo.

N°. A. According to a Declaration made the 4 *Febr.* 1749 before *Jan Barels*, Notary, and attested before the Honourable the Burgomasters of this City, by *John Berg*, Mate *Erasmus Christians*, Carpenter, and others, it appears, that the Ship was loaden at *Smirna* with new Fruit, and departed with the same in good Order and Condition the 23 *Sept.* 1748, but they afterwards met with hard Gales of Wind and rough Seas, both in the Channel of *Malta* and near the Island of *Sardinia*, and likewise on the *Mooriſh Coaſt* and on the *Coaſt* of *St. Peter*'s Island.

The

CASE XXVI.

The 14 and 15 of *December* they went through the *Engliſh* Channel, and between the 15 and 16 of the ſame Month being got on the *Dutch* Coaſt, they were again overtaken by a Storm on the Height of *Kampers Duyn*, which continued with ſuch Violence that on the 19th they were not able to keep out at Sea any longer; and not meeting with any Pilot Boats out at Sea, they were obliged to run the Ship a-ſhore; but the Rails and the Tafferel being beat to Pieces by the Violence of the Sea, the Ship's Crew were ſo overpowered and fatigued by being expoſed thereto, that not a Man of them could keep upon Deck. That nevertheleſs they let go their Sheet Anchor to try to keep the Ship off the lower Shore, but the ſame parting in the Evening, they thereupon let go their ſmall Bower Anchor and Cable to the ſame Purpoſe, but that parted likewiſe by the Violence of the Weather. Whereupon the Wind luckily coming about to the North, they cut both their Cables, and went to Sea again, and having got a Pilot on board the 20 ditto they brought the Ship into the Texel.

That having, as aforeſaid, loſt their Anchors and Cables, and for the Preſervation of the Ship run her on the South-Coaſt, where being a-ground, the Pilot *Meyer Thennis Shillinger* came with his Ship to their Aſſiſtance, which they accepted of (and likewiſe others), that by the Help of this Pilot, tho' they had got from the *Texel* an other ſmall Bower and Sheet Anchor and Cables a-board, yet finding them very bad and not in a fit Condition to venture to ſet the Ship a-floating, there were two other Anchors and Cables ſent from this Town by a Sloop belonging to *Jan Shouten* which Sloop being loſt in the *Texel*, the Anchors and Cables were nevertheleſs ſaved and carried a-board by the People who ſaved them, with which they had worked the Ship from the Shore, and had brought her into deep Water the 18 *January*, after which they arrived at this Town the 25 ditto.

The Loſs and extraordinary Charges occaſioned as above are (among others) the following:

It appears by the Report of *Houthuys* and *Durtsbach*, that the Computation of the above Loſs has been inſpected by them, *viz.*

CASE XXVI. N°. B. By the Loss first of the Sheet Anchor and afterwards of the small Bower Anchor, which had been let go for the Preservation of the Ship, Cargo and People's Lives, to endeavour to work the Ship off the Shore, and the Cables belonging to the said Anchors, having been cut and parted amounting to

		Fl. 1037
Charges of the Estimate	- -	25
To the Attorney *Milius*, for Petition and Summons, as *per* Account	- -	7 : 11
		Fl. 1069 : 11

N°. C. To *Dirk Jonker*, Pilot, for himself and others who saved the Ship, when she was a-ground and brought her into deep Water, for their Trouble and Assistance, allowed them by Decree - - *Fl.* 588

To other Assistants	-	16 : 17
To ½ Pilotage	- -	30 : 8
		635 : 5

N°. D. In consequence of the Account of the said Pilot, *M. T. Shellinger*, in saving the Ship and Cargo (among other Things) paid:

An Act of the first Lighter	*Fl.*	: 12
Postage - - -		: 6
The Hire of two Anchors and one Cable - -		90
To the Inspectors of the Dyke		4 : 15
Freight to carry Goods a-board		7 : 6
Interest for his Money -		10
Dr. *Eckhorst* for Visits and Boathire		11 : 10
		124 : 9

N°. E. To Salvage of the above two Anchors and Cables sent from this Town to the *Texel*, which on the Sloop's being cast away were saved by other People, and carried a-board the Ship on the South Coast, paid as *per* Receipt - 234 : 13

To

	Brought over	*Fl.* 2063 : 18	CASE XXVI.
To Lighterage, Freight and Demorage, as *per* Receipt, for taking Goods out of the Ship to lighten her, in order to bring her off the South Shore.			N°. F.
To *Jan Kaan* -	*Fl.* 68 : 10		
Jan Jans Elyn -	119		
		187 : 10	
To *Claas Viſſer* for the Hire of two Pieces of Cable for the Uſe of the Ship, while ſhe was on the South Shore, as *per* Receipt -		35	N°. G.
To *Dirk Cornelis* extraordinary Pilotage - - -	*Fl.* 30	24	
Deduct for ſailing up -	6		
To Monthly Wages of Ten of the Ship's Crew for 28 Days, being the Time they were on the South Coaſt, at 222 Fl. *per* Month, as *per* Note - - - -		201 : 4	N°. H.
To Board-Wages for them and the Pilot, a 6 Stivers *per* Day, is - -		84	
To the Notary *Barels*, for the Declaration -		11 : 16	N°. I.
To *Jan Sheltes*, for Conferences and his Trouble as *per* Account - - -		55	N°. K.
To *Abraham Milius*, for the making up, continuing and diſcharging this with the Seal		36	
		Fl. 2698 : 8	

Actum, *Amſterdam*, the 4 *June*, 1749.

M. and Sons,
Owners of the Ship commanded by
Gerd Corneliſens.

Inſpected

CASE XXVI. N°. L. INſpected by the Commiſſioners of the Company of Aſſurances and Averages of the City of *Amſterdam*, a Declaration before the Notary *Jan Barels* made the 4th of *February*, (repeating all what has above been related by Meſſrs. *M.*) and an Account as above, ſigned by Meſſrs. *M.* as Owners of the beforementioned Ship, containing the Particulars of the Loſs and the Charges which have been occaſioned and ſuſtained thereby, and ſince paid, amounting in the Whole to the Sum of - - *Fl.* 2703 : 19

Which *M.* and Sons therefore deſire may be proportioned by a Form of a general Average on the Ships and Cargo.

The Freighters producing to this Purpoſe their Declaration, containing the Quality, Quantity and Value of the Goods together, with a Valuation of the Ship as follows:

M. and Sons	239 Caſks and 257 Boxes Figs damaged at *Fl.* 2560, admitted by the Commiſſaries for -	*Fl.* 2550
Ditto	450 Caſks Raiſins, likewiſe damaged, at *Fl.* 8950 ditto	8950
Ditto	272 Caſks Figs, at *Fl.* 1390, ditto	1400
Jan. Tremaux for *H. C.*	769 Boxes Figs, at *Fl.* 2018 ditto	2025
Ditto	*I.* and *A. F. D.* 2 Packs Goats Hair, at *Fl.* 400 ditto	400
Arachiel di Paulo, Goods -	*Fl.* 250 ditto	250
The above Ship is valued at	*Fl.* 2200 ditto	2300
		Fl. 17875

N°. M. In Order therefore to ſettle this general Average, the Commiſſaries have examined the Articles in the Account of the Loſs and Charges, and adjuſted the ſame in the Sum of *Fl.* 2128 : 4, having admitted of no more than 500 *Fl.* for the Article of *Fl.* 1037, and 12 *Fl.* 10 *Stiv.* for that of *Fl.* 25.

The

CASE XXVI.

The general Average settled as above, is	*Fl.* 2128 :	4 :	
To be added thereto, *viz.*			
For the Privilege of the Commissaries		17 : 17 :	
To the Secretary for the Valuation of the Ship		8 : 8 :	
For registering - - -		6 :	
For the Messenger of the Company		3 : 12 :	
For the Seal - -		7 : 8 :	
For the Poor - -		6 :	
For the settling for the Poor -		5 : 15 : 4	
	Fl. 2171 :	16 : 4	

The Commissaries find that the above *Fl.* 2171 : 16 : 4, when proportioned upon 17875 *Fl.* every Hundred is to bear *Fl.* 12 : 3.

In Consequence whereof the Commissaries condemn the following Freighters to pay the beforementioned Damage and Charges to the Captain as follows:

M. and Sons	of *Fl.* 2550	Paid *Fl.* 309 :	16 : 8
Ditto -	8950	1087 :	8 : 8
Ditto -	1400	170 :	2 :
J. Tremaux -	2025	246 :	: 12
Ditto - -	400	48 :	12 :
Arachiel di Paulo -	250	30 :	7 : 8
The Captain for the Ship	2300	279 :	9 :
		Fl. 2171 :	16 : 4

Given by the abovementioned Commissaries, the 8th July, 1749.

ANNO

ANNOTATIONS.

In the foregoing general Average ſettled at *Amſterdam* it may be remarked;

N°. N. That the Gentlemen Commiſſaries have deducted from the Value of ſundry Articles in the Account delivered to them by the Owners, without giving any Reaſon for ſo doing: From ſome a few Guilders leſs, and from others more; others again they leave as they were, and reduce all to even Sums, though in general they have altered but little of the two following real Accounts of *M*; nor will we take upon us to determine whether *Jean Pierre Ricard*, a late Merchant, in his Book *Le Negoce d'Amſterdam* (Editione mea 1722. Page. 282) is in the right or not, where he ſays; " Que bien ſouvent les uns ou les " autres ſont lézés par le reglement que font Meſſieurs les Com- " miſſaires des Avaries car quoiqu'ils diminuent les Articles qu'ils " trouvent paſſés trop hauts, à leur gré & ſelon qu'il leur plait, " il n'eſt pas poſſible, qu'ils puiſſent ſavoir la véritable valeur de " beaucoup de Choſes que les Marchands ne paſſent que ſuivant " leur Intêrêt." But it is hardly to be conceived that in ſuch a Chamber or Court of Judicature compoſed of Men of Ability and good Accomptants, and where undoubtedly proper Regiſters have been kept from its firſt Inſtitution to this Time, of all Regulations of Averages, and other Tranſactions ſettled and determined therein, there ſhould be any Deficiency in Point of Judgment: And therefore we think a greater Regard ought to be paid to their Deciſions than to thoſe of private Perſons, who have not the latter of thoſe Advantages. However, that the preſent Regulation might have remained intirely free from Exception, it would have been proper, and indeed ought to have been inſiſted on, that the following Obſervations ſhould be cleared up.

N°. O.

Firſt, In regard to the Sum of 8 Fl. 8 Stivers, charged in the Account as paid to the Secretary for the Valuation of the Ship at 2300 Fl. it might have been asked, who made that Valuation? Since that does not appear by the Documents ſent, and the Secretary could not be deemed a proper Perſon to do it himſelf.

Secondly,

CASE XXVI.

Secondly, By the Valuation given in of the Ship, nothing is mentioned about the Freight. And though *Verwer*, in his Treatiſe of the *Neederlandſe Zeeregten* (*Editio mea de An.* 1711, p. 111.) declares that it is ſtill the Cuſtom in *Amſterdam*, as well as in the Northern Parts of *Holland*, ſometimes to make the Ship contribute to the general Average for the true Value of the Ship, and at other Times for the whole Freight: It is ſaid (Art. VI. *Placart van Phil.* II. *ter Kieſe & Optie van den Koopman*) " De Waerde van den " Scheepe ofte die geheele beſprooken Vragt ;" and conſequently it cannot mean the neat Freight. And in the preſent Caſe it ought to have been enquired into at leaſt, whether the Freight of the Goods on board this Ship did not amount to more than *Fl.* 2300, which is what the Ship is valued at. For on inſpecting the following Account Sales rendered by *M.* and Sons, it appears that the Freight only of their 450 Casks of Raiſins and 342 Boxes of Figs amounts to *Fl.* 2986 : 6 *Stiv.* in two Articles, *viz.* *Fl.* 2097, and *Fl.* 889 6 *Stiv.* Now ſuppoſe this Inſurance had been made in two different Policies ; the one on the Ship, and the other on the Freight ; (for it is permitted to do both, by the new Regulation made at *Amſterdam* 1744, Art. VII. and XV.) Would it have been reaſonable that the Underwriters on the firſt Policy ſhould bear the Whole of the general Average ; and thoſe of the other contribute nothing towards it ?

N°. P.

N°. Q.

And notwithſtanding it may be requiſite to leave general Averages to the Deciſion of the Commiſſaries, on Account of the Variety and Mutability of the Circumſtances thereof, (as taken Notice of in the new Regulation, Art. 2.) we would at the ſame Time recommend it to them to eſtabliſh the Right between Underwriters and the Parties inſured with more Certainty, and on a more ſolid Foundation.

N°. S.

This Act of Adjuſtment was delivered to the *L. A.* C°. for their Examination, together with an Account of the Particulars of the general Average, according whereto a Demand was made for the Sums inſured by them, *viz.*

CASE XXVI.

Per £. 500 *St.* upon the Ship to contribute thereto 12 *Fl.* 3 *Stiv. per Cent.* on 2300 *Fl.* is *Fl.* 279 : 9 current a 11 *Fl.* - - *£.* 25 : 8 :

Per £. 1000 St. on Goods which coſt 7272 $\frac{8}{11}$ Liv. Dollar valued at 2$\frac{1}{4}$ *d. St. per* L. Dol.

General Average and Particulars on

Raiſins	-	*£.* 190 : 2 :	
Ditto	- Ditto on		
Figs	- -	44 : : 2	
			234 : 2 : 2
			£. 259 : 10 : 2

N°. T. But inaſmuch as Meſſ. *M.* and Sons had demanded nothing more than the general Average upon the Hull of the Ship, [though it admitted of a Query whether they had not a Right to demand as a particular Average, Part of the *Fl.* 537 which had been abated them in the Value of the Anchors and Cables loſt, and had been appraiſed at *Fl.* 1037; for notwithſtanding the known Ordinance, which ſays that the Materials of the Ship muſt be applied to their proper Uſes, as Occaſions require; and that the Inſurers are not anſwerable for the Waſte or Wear and Tear thereof; yet in ſome particular Caſes there ought to be a Conſideration: As for Inſtance, where a Maſter runs his Ship a-ſhore, and afterwards ſees a Probability of ſaving her, by putting in Practice ſome more than common Diligence; though at the ſame Time it were in his own Option, and he would be juſtified whether he uſed that uncommon Diligence or not; ſuch particular Services, and Exertions of Duty (as the judicious *Quintin van Weitzen* has long ſince obſerved) however they may not come under the Denomination, or be conſidered as general Averages, deſerve to be as particularly rewarded, and ought by all Means to be encouraged by the Inſurers] The *L. A.* C°. therefore would not give the Inſured the Trouble to ſearch or ſend Abroad for any further Explanations, but were content to ſettle it in the following Manner:

Account

CASE XXVI. N°. U.

Amſterdam, 1749.

Account of Sales of 50 *large and* 400 *ſmall Caſks of* Smyrna *Raiſins out of the Ship* De Vreede.

228 Caſks ſound Raiſins Bttſ. 52994 *lb.* to ſeveral
Gwt. 2 *per Cent.* 1062 *N. B.* 4 lb. Difference on Account of Fractions.

lb. 51932
Tare 14 *per Cent.* 7271

lb. 44661 at 13 *Fl.* *Fl.* 5805 : 9 :

171 ſmall Caſks } damaged Bttſ. 124304
50 large ditto }
1 Miſſing Gwt. 2 *per Cent.* 2486

450 *lb.* 121818
Tare 14 *per Cent.* 17055

lb. 104763 ſold
from 11 $\frac{7}{8}$ to 12 $\frac{1}{4}$ *Fl.* - 6965 : 2 :

Fl. 12770 : 11 :

Prompt Payment 1 *per Cent.* *Fl.* 127 : 14 :
Commiſſion 1 *per Cent.* 126 : 8
254 : 2 :

Fl. 12516 : 9 :

CHARGES.

Freight *per* 959 Cantars at 30 *Dol. per* 35 - *Fl.* 2097 :
Average and *Levant* 10 *per cent.* 209 : 14
Poſtage, *&c.* - 12
Convoy of 110000 *lb.* a 4 *per cent. per* 100 *lb.* 220 :
Delivering 104304 *lb.* a 1 *per cent.* - 104 : 6
Paſſport, *&c.* - 12 : 10

CASE XXVI.

Unloading and opening, a 4 *Stiv. per* ſmall, and 8 *Stiv. per* large Caſks -	170 :	
Delivering *lb.* 104304, a 1 *Fl. per Mill.* - -	124 : 6	
Weighing *per* Ditto, a 1 *Fl.* 4 *Stiv.* and regiſtering at $\frac{1}{2}$ *Stiv. per* ſmall and $\frac{3}{4}$ *Stiv. per* large Casks -	161 : 2	
Charges for Petitions and Duty	69 : 13	
Alms of 6820 *Fl.* a 1 $\frac{1}{2}$ *per Cent.*	102 : 6	
Cooperage, *&c.* -	45 :	
Warehouſe Rent -	12 :	
Brokerage, a 5 *St. per* ſmall, and 10 *St. per* large Casks	125 :	
Commiſſion of *Fl.* 12516 : 9 a 2 *per Cent.* -	250 : 7	
		3715 : 4
Neat		*Fl.* 8801 : 5

M. and Sons.

Amſterdam, 1749.

N°. W. *Account of Sales of* 239 *Caſks* } *Figs out of the* Vreede.
257 *Boxes* }

165 Casks } found Figs to diverſe, weigh-
177 Ditto } ing B^to. groſs - 35762 *lb.*

Trett 250 *per* 4 lb.	*lb.* 1000	
92 a 2	184	
		1184
		34578 *lb.*
14 *per Cent.* Tare		4841
		lb. 29737 ſold
from 9 $\frac{1}{2}$ to 11 *Fl.*		*Fl.* 2977 : 19 : 8

92 Boxes

92 Boxes } damaged, in public Auction
62 Casks }

gross B^to. 16640 *lb.*

Trett 9 *St.* a 2 lb. 18
145 4 580
598

lb. 16042
14 *per Cent.* Tare 2245

lb. 13797 sold
from 8 ½ to 10 *Fl. per* 100 *lb.* 1228 : 10 :

Fl. 4206 : 9 : 8
Deduct 1 *per Cent.* Gwt. 42 : 1 : 8

Fl. 4164 : 8
1 *per Cent.* prompt Payment 41 : 13

Fl. 4122 : 15

CHARGES.

Freight of 415 Cantner a 30
Dol. *per* 35 *Fl.* 889 : 6
Premium and *Levant* 10 *per*
Cent. - 88 : 18
Postage - - 5 : 12

Fl. 983 : 16

Convoy 47000 a 5 *s.*
per 100 *lb.* *Fl.* 117 : 10
Premium 3400 *Fl.*
a 1 *per Cent.* 34 :
Passport - 6 : 8
Fl. 157 : 18
Unloading and opening a 3 *St.*
per Piece - 74 : 8
Delivering 52402 *lb.* a 1 *Fl. per*
1000 *lb.* = 52 : 8

Weigh-

CASE XXIV.

Weighing Ditto a 1 *Fl.* 4 *per* 1000 *lb.* a $\frac{1}{2}$ *St. per* Piece	76 :	
Requeſt and Charges	12 : 6	
Alms 1200 *Fl.* a 1 $\frac{1}{2}$ *per Cent.*	18	
Warehouſe Room, Cooperage, *&c.* -	42 : 18	
Brokerage a 2 *St. per* Box, and 3 *St. per* Cask -	61 : 11	
Commiſſion of *Fl.* 4122 : 15 a 2 *per Cent.* -	82 : 9	
		1561 : 14
Neat		*Fl.* 2561 : 1

M. and Sons.

N°. X. *Account of Sea Damage on the* 450 *Caſks Raiſins, weighing together* 104763 *lb. neat, according to Declarations upon Oath of two Brokers, if not damaged would have been ſold at* 13 Fl. .. - - Fl. 13619 : 4

Deduct 1 *per Cent.*	136 : 4
Fl.	13483 :
Deduct 1 *per Cent.*	134 : 17
Fl.	13348 : 3
And now are ſold for	12516 : 9
is Loſs	Fl. 831 : 14

Extraordinary Charges by the public Auction -	Fl. 69 : 13	
	102 : 6	
		171 : 19
General Average on 8950 Fl. a 12 $\frac{3}{20}$ *per Cent.*		1087 : 8
		Fl. 2091 : 1
At 11 Fl. is as above		£. 190 : 2

M. and Sons.

Account

CASE XXVI.

Account of the Damage on the Figs of the
165 *Caſks* } *weighing together Nt.* 43534 *lb. if not damaged*
177 *Boxes* } *would have been ſold according to Declaration on*
Oath at 10 Fl. per 100 lb. - Fl. 4353 : 4

Deduct 1 *per Cent.*	43 : 11	
	Fl. 4309 : 13	
Deduct 1 *per Cent.*	43 : 2	
	Fl. 4266 : 15	
And now are ſold for	4122 : 15	
is Loſs	Fl. 144	
Extraordinary Charges at the public Auction -	Fl. 12 : 6	
	18	
		30 : 6
General Average on Fl. 2550, at 12 $\frac{3}{10}$ *per Cent.* - - -		309 : 16
	Fl. 484 : 2	
At 11 Fl. as above	£. 44 :	: 2

M. and Sons.

Whereon the *L. A. C.* farther obſerved, that as the Fruit was for Meſſrs. *M.* and Sons own Account, properly no Commiſſion ſhould have been deducted; conſequently that 250 Fl. 7 for Commiſſion being added to the 8801 Fl. 5, makes neat - - - Fl. 9051 : 12 N°. Y.

And to the 2561 : 1 add 82 Fl. 9	is neat	2643 : 10
Damage on the Raiſins	-	831 : 14
Ditto on Figs	-	144
The whole Value that is to bear the Average Fl.		12670 : 16

12670

CASE XXVI.

12670 Fl. 16, a 11 Fl. is Sterling £. 1151 : 17 : 11.

Therefore if £. 1151 : 17 : 11 looſe £. 234 : 2 : 2, what ſhall £. 980? The Anſwer being £. 199 : 2 : 11, is what the *L. A.* C°. would have to pay on the Policy of £. 1000 on Goods inſured by them.

For according to the Invoice, which amounts to 7751 ½ Lw. Dr. valued at 2 ¾ *s.* in the Policy, and is Sterl. £. 1065 : 16 : 7
And adding thereto the Premium of 3 ½ *per Cent.* 39 : 9 : 5

Makes £. 1105 : 6 :

And in order to cover this Intereſt entirely, the Sum of £. 1127 : 15, to pay 98 *per Cent.* might have been inſured; which £. 1127 : 15 being leſs than the Value before-mentioned at *Amſterdam* of £. 1151 : 17 : 11, it would have been but reaſonable to have proportioned the Average upon the laſt-mentioned Sum. But yet as perhaps they might have had other People concerned with them, and conſequently Part of the Commiſſion might be admitted, the *L. A.* C°. agreed (inſtead of £. 199 : 2 : 11) for general and particular Average upon the Raiſins and Figs to pay - - £. 207 : 11

N°. Z.

And upon the Ship for £. 500, general Average £. 25 : 8, to pay 98 *per Cent.* is - - - 24 : 18

£. 232 : 9
Deduct ½ *per Cent.* prompt 1 : 3

£. 231 : 6

CASE

CASE XXVII.

CASE XXVII.

A general Average for Charges of reclaiming a Cargo of Sugars detained in England, *regulated at* Hamburgh, *and a particular Average upon the Sugars ſettled at* London.

IT appears by an Atteſtation made the 22d of *May* before the Deputies of the Admiralty of this Place, that on Deſire of Capt. *John Peter Clavir*, perſonally appeared his Mate, *Michael Eggers*, *Jeronimius Marcus*, Boatſwain, *Henry Schmidt*, Carpenter, *Jacob Hapke*, Cook, *Jacob von Bergen*, *Jodum Mahler*, *Burger Pieterſz*, *Andrew Meyer*, and *John Adam Sommer*, Sailors; who made the following Depoſitions on Oath. The firſt ſix ſaid to be true, that as they the ſaid Deponents, on the 22d of *December* laſt, in their tight and well provided Ship called *Commerce*, of which the ſaid *John Peter Clavir* was Maſter, lay at Anchor in the Harbour of *Nantes*, laden with Sugars, a great Storm, by which the Sea went over the Ship, obliged them to let go another Anchor; but the Storm increaſing, the had broke. On the 23d ditto they had again got a great deal of Water in the Ship and Boat, the firſt of which they diſcovered by Pumping; ſo that not only the Boat ſunk, but the were alſo waſhed away, which obliged them to cut their Cables.

On the 4th of *January* of this preſent Year they ſailed from thence. On the 23d ditto they had met with an *Engliſh* Privateer who took from them two Casks of Sugar and then left them. On the 24th ditto another *Engliſh* Privateer had come on board of them, and taken away one Cask of Sugar. On the 25th another *Engliſh* Privateer came up with them, who carried them into *Dover*. That five of the Crew had left the Ship at *Dover*, in whoſe Place the Maſter had taken the three laſt Deponents. In laying at *Dover* on the 11th of *February* they had found the Ship leaky, that they had had four Feet Water in the Hold, when after four Hours pumping they had found

CASE XXVII.

the Water ſweetened by the Sugar and the Ship half a Foot lighter. And although the Maſter and theſe Deponents did their Utmoſt to unload the Cargo, they could not finiſh it before the 3 *April*, when the Ship was already declared free; and after they had unloaded her, they had found 42 Caſks of Sugar wet and partly melted away, wherefore they had an Order of their Correſpondent there, to fill up the ſaid 42 Caſks, to which they uſed 18 Caſks, and thus there remained only 24 full Caſks. On the 26 ditto the Maſter had engaged the before mentioned three Deponents, which ſaid three laſt Deponents together with all the others on their Oath further declared, that on the 16 ditto having taken their Cargo on board again, they the ſaid Deponents ſailed on the 30 ditto from *Dover* and proceeded on their Voyage, that on the 4 *May* they diſcovered *Helgeland*, and having got an *Helgeland* Pilot on board, arrived the ſame Day in the *Elbe*, and on the 11 ditto, by the Aſſiſtance of two Lighters and the People that were in them, before this City.

The ſaid Deponents further declare, that having unloaded the Cargo there appeared great Damage on the ſame, which could only be aſcribed to the Ship's ſpringing a-leak, which had been occaſioned by the Quantity of Sea-Water that ſhe made, as mentioned before: The Ship by their Sailing was tight and ſtrong, the Hatches, Maſts and Pumps well conditioned, and the Cargo ſecurely ſtowed by proper People; that the ſaid Deponents had not imbezzled, ſtolen, ſold or divided among them, nor conveyed from on Board any Thing of the Cargo, which had neither been done, to their Knowledge, by the two Boys, that had been left on board, as the Whole is contained at large in the beforementioned Atteſtation, which is here annexed, marked A. The ſaid Ship and Cargo has been reclaimed by Mr. *S. B.* of *London*, and his Accounts and other Papers having been delivered up to me, I have adjuſted the Average as follows:

Account

CASE XXVII.

Account of the Capital.

Meſſ. *I. L. D.* and *I. B.*

129 Caſks brown Sugar 250 $\frac{1}{4}$ $\frac{9}{4}$ ditto white Sugar }	neat lb. 374517.	*Mk.* 88000
The Ship *Commerce* and the neat Freight		- 8000
		Mk. 96000

Account of the General Average.

The Privateer the *Duke of Dorſet*, Capt. *John Hunt*'s Lawſuit Charges, which the Reclaimants engaged to ſatisfy, amount as *per* Account B. to - - £. 53 : 5 N°. B.

The Account of Charges paid by the Privateer's Agent, as ſeparately noted in the Account B. conſiſts, *viz.*

To *John Edwards*, for his Attendance -	£. 1 : 11 : 6	
To *Richard Collins*, for a Journey to *London* with the Ship's Papers -	3 : 3	
To *Matthew Norris*, for Piloting the Ship into the Harbour - -	1 : 1	
To the Commiſſioners, *&c.* for the Examination -	9 : 3	
To *Joſeph Glandfield*, for a Dinner and Drink, *&c.*	3 : 7 : 9	
To *Andr. Read*, for a Watch on the Ship, from 18 *Jan.* to the 19 inſt. 61 Days, at 1 *s.* 6 *d.* -	4 : 11 : 6	
To Poſtage, *&c.* -	10	
To the Crew of the *Duke of Dorſet*, for their Trouble in pumping the Ship and preventing the Damage on the Goods -	3 : 7 : 3	
		26 : 15

CASE XXVII. N°. C. The Law-suit's Charges on the Reclaimants Part to reclaim the Ship and Cargo, as *per* Particulars in the Account C. - 48 : 6 : 10

Out of Mr. S. B's *Account* D, *dated the* 3 *May.*

	For Mr. *J. B*'s Affidavit got from *Bath*, to convince the Agents of his being half concerned in the Cargo, and that he and Mr. *D.* were originally concerned together, and other Queries	£. 4 : 16 : 8	
	For Postage - -	4 : 10 : 6	
N°. D.	For Commission for reclaiming the Cargo -	63	
	For £. 190 Insurance on the Charges - -	4 : 19 : 6	
			77 : 6 : 8

Out of Mr. S. B's *Account*, *dated* London *the the* 3 May, *marked* E. *as follows:*

At Dover.

To *John Knowles*, for the Permission of landing the Cargo and Port Dues at *Dover* and Rye at 3 *d. per* Tun	£. 3 : 15 : 6	
To the Notary *Will. Lambe*, for 3 Protests -	2 : 2 : 6	
To *Edward Nile*, for keeping off the Water, for three Tides, in order to get the Ship to the Keys -	19 : 6	
To Cap. *Clavier*, paid by him to some *Dutch* Sailors, who assisted in unloading and loading the Ship - -	8 : 2 : 8	
To Porters, for housing the Sugars, opening and inspecting into the Casks,		

filling

CASE XXVII.

filling up the damaged ones, and taking them all out of the Work-houſes again - -	18 : 18 : 4
To *Edward Worthington*, Cooper, and his Men, for 16 Days Labour and Hoops and Nails uſed -	6 : 13
To Cartage of the Sugars from the Keys to the Ware-houſe, and back again - -	11 : 10 : 8
To Ware-houſe Rent for the whole Cargo -	6 : 6
To Lighterage from and on board, 140 Tuns, a 16 *d.*	9 : 6 : 8
To *John Knowles*, for the Permiſſion of ſhipping the Sugars again - -	5
To the Surveyors and other Cuſtom-houſe Officers for Fees landing and ſhipping the Cargo -	5 : 5
To *John Atkins* and *Andr. Read*, for 16 Days Attendance by Order of the Collector - -	3 : 10
For the Ship's laying at the Key three Months, at 2 *s.* 6 *d. per* Week -	1 : 10
To *Will. Lambe*, for Atteſtations and looking after the Sugars - -	2 : 3 : 8
For ſeveral petty Expences with the Officers and Surveyors, and Poſtage -	1 : 1
To Caſh paid Capt. *Clavier* for the Uſe of the Ship *Commerce*, which I do	

not

CASE XXVII.

not charge here, but as *per* following Account the ſame muſt be born by the Owners, Mſſ. *H.* and *B.*

To Mr. *Minet* at *Dover*, for the Permiſſion of unloading and loading the Ship, their Attendance and other Services -	15 : 15	
For Commiſſion of reclaiming the Ship, ſupplying the Captain with Money, and correſponding with the ſame - -	26 : 5	
For £. 210 Inſurance on the Charges - -	5 : 9 : 6	
		122 : 19
		£. 328 : 12 : 6
at 35 *s. per £. Sterl.*		*Mks.* 4313 : 3

Nº. E. *Out of Capt.* Johann Peter Clavier's *Account* F. *as follows:*

For Lighterage of 160 Tuns, as *per* Account G. -	£. 12 : 13 : 11	
To the Harbour Maſter for Harbour Dues -	4	
To take down the Sails -	8	
For the Copy of a Proteſt -	5 : 6	
To open the Sluices -	19 : 6	
For a Journey to *Folkſtone*	9 : 3	
To the Pilots who got the Ship out of the Dock and carried her to Sea -	2 : 12 : 6	
To the Captain's Board-wages, 96 Days, a 2*s.* 6*d.*	12	
For ditto of ſix of the Crew, 96 Days, a 1 *s.* is £. 28 : 16 of which only 10 *d.* a Day are allowed, is -	24	

For

CASE XXVII.

For five Men, who aſſiſted at the Unloading and Loading, 12 Days, and were boarded during that Time, a 1 *s.* *per* Day, of which only 10 *d.* a Day are admitted, is - 2 : 10

£. 55 : 2 : 8

a 35 *s.* - - 730 : 3

As per *Verdict of the Elder Captains of the* 20 May *of this preſent Year, marked* H, *the Half* [a] *of the Monthly Wages has been allowed to the following Men for the Time they were detained in* England, *which according to Meſſrs.* H. *and* V. B. *Account, marked* I. *for* 3 *Months amounts,* viz.

N°. F.

To the Mate, a 50 Mk. *per* Month, is *per* ½ - *Mk.* 75
To the Carpenter, a 50 Mk. ditto - - - 75
To the Boatſwain, a 33 Mk. ditto - - - 49 : 8
To the Cook, a 33 Mk. ditto 49 : 8
To two Sailors, a 21 Mk. ditto - - - 63
To the Capt. *Clavier*, a 100 Mk. ditto - - - 150

Mks. 462

at 116 *per Cent.* - 398 : 5

To the *Helgeland* Pilot, for bringing the Ship into the River, as *per* Receipt K. *Mks.* 126
Deduct for uſual Pilotage 90

Mks. 36

[a] As the Elders allowed to the Seamen but half of their Wages during the Detention, it ſhews they were remiſs in doing their Duty in unloading the Ship, being leaky; the Captain whereof was obliged to hire five Men for Aſſiſtance, as appears by this Account, and it ſeems the Elders therefore inflicted upon the Seamen the juſt Puniſhment, of loſing half their Wages.

For

CASE XXVII.

For the Loſs ariſen by cutting the Cable in the Harbour of *Nantes*, which has been eſtimated by the Elder Rope-makers, as *per* Certificate, marked K, with the Expences attending this Eſtimate - -	230		
For the Crew's Depoſition before this Admiralty -	6 :	4	
To notify the Average -		8	
For two Lighters, to bring up the Ship, Mk. 12. is not allowed.			
Mks. 272 : 12			
a 116 *per Cent.* - -			235 : 4
For adjuſting this Average - -			140
To gather the neceſſary Papers, and for ſeveral Errands - - -			3
To the Poor - - - -			1
B°. *Mks.* 5820			

Repartition.

N°. G. Theſe *Mks.* 5820 *B°.* divided on the Capital of *Mks.* 96000 *B°.* is for every 100 Mks. - *Mks.* 6 : 1 *s. B°.* to be paid by the following:

Mr. *I. L. D.* and Mr. *I. B.* on *Mks.* 88000 -		*Mks.* 5335
The Ship *Commerce* with the neat Freight on -	8000 -	485
Mks. 96000 -		*Mks.* 5820

The Original three Proteſts, which were reſpectively made by Capt. *John Peter Clavier* and his People, and by himſelf, before *Will. Lambe*, Notary Public, at *Dover*, concerning the Detention of the Ship, the Leak ſhe ſprung, and the Plundering of

of the Cargo by the Privateers, are alſo annexed to this Diſpatch; In Witneſs whereof I the authoriſed Diſpacheur, to whom the Adjuſting of all Aſſurance and Average Affairs are referred, have ſigned this with my own Hand, and ſealed it outwardly, *Hamburgh*, the 5 *July* 1748. CASE XXVII.

JOHN WILLIAM SCHAFFSHAUSEN.

I declare, that this Tranſlation agrees in every Particular with the true original Diſpatch of a general Average made up and ſettled here by Mr. *John William Schaffshauſen*, appointed Diſpacheur by the Admiralty of this Place, Witneſs my Hand and Seal. *Hamburg*, the 18 *October* 1748. new Stile.

JOHN ADAM WALTHER,

Clerk of the Chancery of the City of *Hamburgh*, and Notary Public.

Account of Damage on 111 *Caſks of Sugar, which were reduced at Dover to* 93 *Caſks (*18 *having been uſed to fill up) being Part of a Cargo of* 379 *Caſks, and* $\frac{140}{4}$ *Caſks in the Ship* Commerce, *Capt.* John Peter Clavier, *ſhipt by Meſſ.* L. F--s *of* Nantes, *for Account of Mr.* I. L. D. *and Mr.* I. B. *Merchants of* Hamburgh, *which ſaid* 111 *Caſks damaged Sugars weighed at* Nantes, *as* per *Certificat annexed:* N°. H.

120031 lb. Brutto.
1800 $1\frac{1}{2}$ *per Cent.* Difference of the *Nantes* to *Hamburg* Weight.

121831 lb.
1218 1 *per Cent.* good Weight.

120613 lb.
21710 Tare 18 *per Cent.*

98903 lb. If not damaged would have been worth, as valued by ſworn Brokers a $9\frac{3}{4}$ *per* lb. *Mks.* 30134 : 8
13 Months diſcount $8\frac{2}{3}$ on $108\frac{2}{3}$ 2403 : 6

B°. *Mks.* 27731 : 2

CASE XXVII. The aforesaid 111 Casks of damaged Sugar reduced at *Dover* to 93 Casks, were publickly sold in Presence of *J.A.W.* Notary Public, and of the two sworn Brokers *H.H.S.* and *F.N.* as follows:

LOT I. 5 Casks weighed 5789 lb. Bruto
Good Weight 1 *per cent.* } 1191
Tare 20 *per cent.* }

Neat 4538 lb. a $7\frac{5}{8}$ *d. Mks.* 1081 : 5
$8\frac{2}{3}$ *per cent.* Dif. 86 : 4
Mks. 995 : 1

LOT II. 5 Ditto 5631 lb. Bto.
Good Weight 1 *per cent.* } 1171
Tare 20 *per cent.* }

Neat 4460 lb. a $8\frac{1}{16}$ *d. Mk.* 1158 : 9
$8\frac{2}{3}$ *per cent.* Dif. 92 : 6
1066 : 3

LOT III. 5 Ditto 5808 lb.
Good Weight 1 *per cent.* } 1208
Tare 20 *per cent.* }

Neat 4600 lb. a $7\frac{3}{4}$ *d. Mks.* 1114 : 1
$8\frac{2}{3}$ *per cent.* Dif. 88 : 13
1025 : 4

LOT IV. 5 Ditto 5270 lb.
Good Weight 1 *per cent.* } 1096
Tare 20 *per cent.* }

Neat 4174 lb. a $8\frac{1}{8}$ *d. Mks.* 1059 : 13
$8\frac{2}{3}$ *per cent.* Dif. 84 : 8
975 : 5

LOT

CASE XXVII.

LOT V. 5 Ditto 5471 lb.
Good Weight 1 *per cent.* Tare 20 *per cent.* } 1138
Neat 4333 lb. a 8 1/8 *d. Mks.* 1100: 3
8 2/3 *per cent.* Dif. 87: 12
1012: 7

LOT VI. 5 Ditto 6069 lb.
Good Weight 1 *per cent.* Tare 20 *per cent.* } 1263
Neat 4806 lb. a 7 5/8 *d. Mks.* 1145: 3
8 2/3 *per cent.* Dif. 91: 5
1053: 14

LOT VII. 5 Ditto 6093 lb.
Good Weight 1 *per cent.* Tare 20 *per cent.* } 1267
Neat 4826 lb. a 7 5/8 *d. Mks.* 1187: 10
8 2/3 *per cent.* Dif. 94: 11
1092: 15

LOT VIII. 5 Ditto 6433 lb.
Good Weight 1 *per cent.* Tare 20 *per cent.* } 1338
Neat 5095 lb. a 8 1/8 *d. Mks.* 1333: 7
8 2/3 *per cent.* Dif. 106: 6
1227: 1

CASE XXV.

LOT IX. 5 Ditto 5588 lb.

Good Weight 1 *per cent.* Tare 20 *per cent.* } 1162

Neat 4462 lb. a 8 ½ *d. Mks.* 1175 : 10
8 ⅔ *per cent.* Dif. 93 : 12
1081 : 14

LOT X. 5 Ditto 5260 lb.

Good Weight 1 *per cent.* Tare 20 *per cent.* } 1094

Neat 4166 lb. a 7 $\frac{13}{16}$ *d. Mk.* 1017 : 1
8 ⅔ *per cent.* Dif. 81 : 2
935 : 15

LOT XI. 5 Ditto 4928 lb.

Good Weight 1 *per cent.* Tare 20 *per cent.* } 1233

Neat 4695 lb. a 8 *d. Mks.* 1173 : 12
8 ⅔ *per cent.* Dif. 93 : 10
1080 : 2

LOT XII. 5 Ditto 6005 lb.

Good Weight 1 *per cent.* Tare 20 *per cent.* } 1249

Neat 4756 lb. a 8 $\frac{5}{16}$ *d. Mk.* 1235 : 7
8 ⅔ *per cent.* Dif. 98 : 9
1136 : 14

LOT

CASE XXVII.

LOT XIII. 5 Ditto 5841 lb.
Good Weight 1 *per cent.* } 1215
Tare 20 *per cent.* }

Neat 4626 lb. a 7 $\frac{5}{8}$ *d. Mks.* 1138 : 7
8 $\frac{2}{3}$ *per cent* Dif. 90 : 12
1074 : 11

LOT XIV. 5 Ditto 5264 lb.
Good Weight 1 *per cent.* } 1095
Tare 20 *per cent.* }

Neat 4169 lb. a 8 $\frac{3}{16}$ *d. Mks.* 1066 : 11
8 $\frac{2}{3}$ *per cent.* Dif. 85 : 1
981 : 10

LOT XV. 5 Ditto 5218 lb.
Good Weight 1 *per cent.* } 1085
Tare 20 *per cent.* }

Neat 4133 lb. a 8 $\frac{1}{8}$ *d. Mks.* 1049 : 6
8 $\frac{2}{3}$ *per cent.* Dif. 83 : 10
965 : 12

LOT XVI. 5 Ditto 5678 lb.
Good Weight 1 *per cent.* } 1181
Tare 20 *per cent.* }

Neat 4497 lb. a 8 $\frac{5}{16}$ *d. Mk.* 1168 : 3
8 $\frac{2}{3}$ *per cent.* Dif. 93 : 3
1075 :

LOT

CASE XXVII.

Lot XVII. 4 Ditto 4588 lb.
Good Weight 1 *per cent.* } 954
Tare 20 *per cent.* }

Neat 3634 lb. a 8 $\frac{1}{8}$ *d. Mks.* 922 : 11
8 $\frac{2}{3}$ *per cent.* Dif. 73 : 9
849 : 2

Lot XVIII. 5 Ditto 5509 lb.
Good Weight 1 *per cent.* } 1146
Tare 20 *per cent.* }

Neat 4363 lb. a 8 $\frac{3}{10}$ *d Mk.* 1116 : 5
8 $\frac{2}{3}$ *per cent.* Dif. 89 :
1027 : 5

Lot XIX. 4 Ditto 3646 lb.
Good Weight 1 *per cent.* } 758
Tare 20 *per cent.* }

Neat 2888 lb. a 8 $\frac{1}{8}$ *d. Mks.* 733 : 4
8 $\frac{2}{3}$ *per cent.* Dif. 58 : 8
674 : 12

Banco Mks. 19304 : 3

Deduct usual Discount in public Sales for prompt Payment 1 *per cent.* - 193 : 1

Banco Mks. 19111 : 2

Extra-

CASE XXVII.

Extraordinary Charges by the Auction, viz.

Brokerage of 93 Casks a 1 *Mk. per* Cask -	*Mks.* 93	
To the Houſe of Correction $\frac{1}{2}$ *per Cent.* Banco -	96 : 8	
Cooperage	*Current Mks.* 40 : 8	
To publiſh the Sale in the Papers and at Change -	5 : 4	
To the Notary who aſſiſted at the Sale - -	6	
To the ſame for drawing the Certificate - -	4 : 8	
For atteſting the Certificate of the Brokers -	4 : 8	
For tranſlating the Proteſt of the Captain -	3 : 3	
For tranſlating the Diſpatch of the general Average, and atteſting the Weights -	8 : 12	
	Mks. 262	
Deduct Agio of *Mks.* 165 : 8 current, a 116 *per cent.* -	22 : 13	
		239 : 3
Neat Proceeds	*Banco Mks.* 18871 : 15	

The Amount of the ſaid 93 Casks Sugar is as *per* Valuation of the ſworn Brokers	*Banco Mks.* 27731 : 2	N°. I.
And the neat Proceeds, after Deduction of the extraordinary Charges of the Sale - -	18871 : 15	
The Loſs is	*Banco Mks.* 8859 : 3	

To

CASE XXVII.

To which muſt be added the Charges of unloading and re-loading the Ship, as alſo other Charges, as may be ſeen in the Account E annexed, which Charges do not concern the reclaiming £. 91 : 4 : 6 at 35 s. - 1198 : 1

The whole Loſs is *Banco Mks.* 10057 : 4

The whole Cargo of Sugars amounts as *per* Invoice to £. 167480 : 10 : 4 a 174 *per cent.* - *Banco Mks.* 96253 : 4

And thus the Average amounts to 10 $\frac{7}{16}$ *per cent.* which is on £. 6000 inſured at *London*, or £. 10 : 8 : 9 *d. per* £. 100 - - - £. 626 : 5

J. L. D.
J. B.

The Average adjuſted at *Hamburgh* is £. 626 : 5
Poſtage and two Certificates from *Dover* 1 : 2
N°. K. Three Casks taken away by the *Engliſh* Privateers, a Certificate whereof is hereunto annexed - - 65
£. 692 : 7

N°. L

THIS Day the 18th of *October*, 1748, New Stile, appeared before me *J. A. W.* Clerk in the Chancery of the Republic and City of *Hamburgh*, *Cæſarea autoritate Notario Publico immatriculato & jurato*, Mr. *J. L. D.* and Mr. *J. B.* Merchants of *Hamburgh*, who upon their Word and Honour declared the following to be true, *viz.*

That the Number of 93 Casks of Sugar, which are contained in the annexed Account of Sales, and of the 18 Casks which were partly uſed to fill up the ſaid 93 Casks, is extracted together with the *French* Weight, from the original Invoice dated St. *Malo*, the 3d of *December* 1747, which was produced to me as follows, *viz.*

N°.

CASE XXVII.

N°.	lb.
564	1137
565	956
566	1194
567	1123
569	1184
570	1248
571	943
572	971
573	960
575	870
576	909
578	1142
580	1234
582	923
584	1273
585	1345
586	1348
587	1151
588	1119
589	971
20	lb. 22001

N°.	lb.
590	1210
591	1232
593	882
597	949
598	865
599	1372
600	1148
603	1103
604	1198
605	1069
606	936
608	1050
611	1044
612	807
613	1017
615	1046
616	1232
639	1338
641	1061
643	1150
20	lb. 21709

N°.	lb.
644	1112
645	1014
646	1188
647	1254
648	1190
649	1123
650	1293
651	1307
653	1223
654	1234
655	1041
656	1185
657	741
658	1322
659	1142
660	1254
661	1227
662	1119
663	1206
20	lb. 23482

N°.	lb.
665	1239
667	1179
668	1195
669	990
670	775
671	1055
672	973
673	1168
674	1136
675	1145
676	1179
677	1092
678	1075
617	1008
618	1192
622	1035
628	1299
631	927
632	1083
20	lb. 21757

N°.	lb.
633	971
635	1106
636	1370
637	1187
638	958
679	1031
680	1085
681	894
682	984
683	928
684	1201
685	973
686	987
689	995
691	1043
563	526
568	927
574	1202
577	1020
579	894
20	lb. 20246

N°.	lb.
581	1011
583	963
595	777
596	1067
601	843
610	1142
619	942
629	970
642	886
666	1248
687	974
Casks	11 lb. 10836
20	22001
20	21709
20	23482
20	21757
20	20246
Casks	111 lb. 120031

CASE XXVII. And as an authentic Document was required of the foregoing Declaration, I ſigned and ſealed this to ſerve where Occaſion ſhall require. Done in *Hamburgh*, *Die & Anno ut ſupra*,

In veritatis Teſtimonium

(L.S.) JO. ADAM WALTHER,

Scriba Cancellariæ Reipublicæ atque Civitatis Hamburgenſis *& Notarius Publicus.*

(L. S.)

N°. M. Invoice of 129 Casks brown } Sugars which we cauſed to
250 and 149 Q^rs. ditto white }

be bought at *Nantes*, and ſhipped in the Ship *Commerce* of *Hamburgh*, Capt. *John Peter Clavier*, by Order, for Account and Riſk, and to the Conſignation of Mr. *J. L. D.* and Mr. *J. B.* Burghers and Inhabitants of *Hamburgh*.

The ſaid Goods are marked and numbered as *per* Margin, and weighed as follows:

Caſks.

Casks,	Brutto,	Tare	lb.	Netto	£.	S.	d.	£.	S.	d.	Casks,
129 Qr. *Casks brown Sugars, N.* 563 *a* 691 *of Mr.* Villesboinet.											
129 -	- 137589 -	17 *per Cent.*	23390 -	114199 a *l.* 34 : 10 -	-		-	39398	13	1	
51 *Casks and* 35 Qrs. *white Sugars N.* 94 *a* 144 *and* 120 *a* 154, *of Meſſ.* Ochs *and* Sweighauſer.											
34 -	- 18808 -	13 *per Cent.*	2445 -	16363 a *l.* 45 -	7363	7					
17 -	- 18572 -	13 *per Cent.*	2414 -	16148 a *l.* 46 : 5 -	7473	1	6				
15 -	3865 -	15 *per Cent.*	580 -	3285 a *l.* 46 : 5 -	1519	6	2				
20 -	4545 -	15 *p.C.* & 45.	720 -	3825 a *l.* 45 -	1721	5					
								18076	19	8	
19 *Casks ditto N.* 145 *a* 163 *of Mr.* Deurbroucq.											
19 -	- 17191 -	13 *p.C.* & 25.	2260 -	14931 a *l.* 45 -	-		-	6718	19		
69 *Casks and* 14 Qrs. *ditto N.* 164 *a* 232 *and* 155 *a* 168 *of Mr.* Luker.											
28 -	- 30682 -	13 *per Cent.* & 250 lb. Refaction d'avarie.	4239 -	26443 a *l.* 46 -	12163	15	7				
1 -	- 1182 -	13 *per Cent.*	154 -	1028 a *l.* 48 -	1033	18	4				
6 -	1325 -	15 *per Cent.*	199 -	1126							
40 -	- 41802 -	13 *per Cent.* & 500 Refaction	5934 -	35868 a *l.* 50 -	18713						
8 -	1833 -	15 *per Cent.*	275 -	1158							
								31910	13	11	

Casks, Brutto,	Tare		lb	Netto		£. S. d.	£. S. d.
8 Casks and 15 Qrs. ditto N. 233 a 240 and 169 a 183 of Mr. Lory.							
8 - -	7029 -	13 *per Cent.* & 40	954 -	6075 } a *l.* 50		- - -	4478 : 10
15 -	3391 -	15 *per Cent.*	509 -	2882 }			
101 Casks and 85 Qrs. ditto N. 241 to 341 and 184 to 268 of Mr. Villesboinet.							
61 - -	69713 -	13 *per Cent.* & 150	9213 -	60500 a *l.* 50		- 30250	
83 -	19962 -	15 *per Cent.*	2994 -	16968 a *l.* 52		- 8823 : 7 : 2	
40 - -	47077 -	13 *per Cent.* & 50	6170 -	40907 } a *l.* 52		- 21491 : 1 : 7	
2 -	497 -	15 *per Cent.*	75 -	422 }			
							60564 : 8 : 9
2 Casks ditto N. 342 and 343 of Meſſ. De la Lande.							
1 - -	1032 -	13 *per Cent.*	134 -	898 a *l.* 50		- 449	
1 - -	1242 -	13 *per Cent.*	161 -	1081 a *l.* 52		- 583 : 14 : 9	
							1032 : 14 : 9
379 149	427337 lb.			364517 lb.			£. 162180 : 19 : 2

CHARGES.

CHARGES.

Weigh Money by the Reception of 364517 lb. a 5 *s. per Cent.*			
	£. 91 :	2 : 7	
Cooperage of 379 Casks and 149 Qrs. a 3 of the last *per* 1 Cask, are 428⅔ Casks a 30 *s.*	643		
Lighterage of 427337 lb. Brutto *per* Tun of 2000 lb. are 213¼ Tuns a 20 *s.*	319 :	15	
Ditto to fetch 51 Casks and 35 Qrs. of Messf. *Ochs* and C°. are 62⅔ Casks a 3 *s.*	9 :	8	
Ditto to fetch 114 Casks and 85 Qrs. of Mr. *Villesboinet*, are 142½ Casks, a 3 *s.*	21 :	7	
Warehouse Rent of 51 Caks and 35 Qrs. of Messf. *Ochs* and C°. 114 Casks and 85 Qrs. of Mr. *Villesboinet*, are 205 Casks, a 4 *s.*	41		
Stowing in the Ship 379 Casks, a 2 *s.* 6 *d.*	47 :	7 : 6	
Ditto - 149 Qrs. ditto a 1 *s.* 6 *d.* -	11 :	3 : 6	
For an Oath taken before the Admiralty, a Certificatet hereof and Copy of the same -	7 :	: 6	
		1191 :	4 : 1
	£. 163372 :	3 :	3
Commission at *Nantes*, 1½ *per Cent.* -	2450 :	11 :	7
	£. 165822 :	14 :	10
Commission of our Direction, 1 *per Cent.*	1658 :	4 :	6
	£. 167480 :	19 :	4

For

CASE XXVII.

For which we charge

On Mr. *J. L. D*-'s Account for his $\frac{1}{2}$	£. 83740 : 9 : 8
On Mr. *J. B*-'s Account for his $\frac{1}{2}$	83740 : 9 : 8
	£. 167480 : 19 : 4
a 174 *per Cent.* -	*B^co Mks.* 96253 : 4

St. Malo, the 3 Dec. 1747.

DE LA LANDE MAGON, Freres.

N°. N.

The L. A. C°.'s Exceptions.

AS this general Average adjusted at *Hamburgh*, had been inspected into by the L. A. C°. the following Remarks occurred thereon:

1) That the Cargo, consisting of 129 Casks brown } Sugars 250 and 149 Q^rs. ditto white } Sugars neat 374517 lb. had been put down for an even Sum of *Mks.* 8 000, and the Ship *Commerce*, together with her neat Freight, for an even Sum of *Mks.* 8000. To admit it thus abroad, it should appear by Particulars from whence those Sums proceeded; and as the Weight of the Sugars shipt, was in *France* neat 364517 lb. and is here mentioned to be 374517 lb. the same seemed to be a Mistake; however in this Adjustment we had properly no Business with the *French* Weight shipt off, but only with the Weight received and delivered at *Hamburgh*, in which a Deficiency of 16802 lb. was found; and as very likely the *Hamburgh* Value of all the Sugars could not be well ascertained to the Dispacheur, so it seems a Value guessed at was adopted, in which he may have judged equitably enough; but such Conjectures, without seeing Deeds, cannot at all Times be approved of abroad.

2) That in Law it is not quite made out yet in *England*, that Men's Wages and Victuals, by such Detentions, are to be admitted into the general Average; but that the Custom

Cuſtom rather is, for the Owners of the Ship to bear them [*a*].

However as we made it in our Policy an expreſs Condition, to be entirely free of all Charges of Detention and Reclaiming, (which make the greateſt Part of this general Average) we thus only ought to anſwer for the Cables cut

Mks. 378 : 5

the Charges of unloading and reloading the Cargo,

£. 91 : 4, a 35 *s.* - - - 1198 : 1

being together - - *Mks.* 1576 : 6

It was approved, the ſame ſhould be reparted as general Average on the Value of the 96000 *Mks.* given up at *Hamburgh*, which is Mks. 1 : 10 *per Cent.* and thus

On *Mks.* 88000, a Mks. 1 : 10 *per Cent.* it would be *Mks.* 1430.

But for particular Average on the Cargo - *Mks.* 8859 : 3

We thought we had Reaſon to deduct at leaſt 6 *per Cent.* on Mks. 27731 : 1 on Account of the 1 *per Cent.* for prompt Payment, 5 *per Cent.* Diminution in the Weight, and Profit, *&c.* in the Price of 9 $\frac{3}{4}$ *d.* - 1663 : 10

7195 : 9

Mks. 8625 : 9

a 35 *s.* - £. 657 : 4

[*a*] It has been judged equitable alſo in *England*, that the Men's Wages and Victuals, during ſuch Detentions, ſhould be born by the Aſſurers, vide *Eſſay*, § 57. pag. 69.

Reckoned

CASE XXVII.

Reckoned on £. 167480 : 19 : 4, a 174 *per Cent.* - - -		*Mks.* 96253 : 9
	a 35 *s.*	£. 7333 : 11
Aſſurance £. 7801 : 13, a 4 *per Cent.*		312 : 1
	on	£. 7645 : 12

Inſtead of $10\frac{7}{16}$ *per Cent.* demanded from *Hamburgh*, it cannot amount to more than $8\frac{3}{5}$ *per Cent.* and thus we ſhould have to pay

On £. 6000, a 98 *per Cent.* £. 5880, a $8\frac{3}{5}$ *per Cent.*
£. 505 : 13 : 7

N°. O.

Reply in Favour of the Aſſureds.

I have three Objections againſt the Adjuſtment of the Average on the Ship *Commerce*,

1) You deduct the 1 *per Cent.* which was allowed at *Hamburgh* by the Sale of the damaged Sugars for prompt Payment; But this is a uſual Diſcount on damaged Goods ſold there publicly, and every Body knows that, be the Diſcount ever ſo much or ever ſo little, the ſame is compenſated in the Price.

2) You deduct 5 *per Cent.* for ordinary Diminution, probably becauſe you imagine the Weights of the Casks to have been taken out of the Invoice before they were ſhipt from the *Weſt-Indies*, when a Diminution may very naturally happen: But the Weight is taken from what they produced in *France* after they had been landed, in order to be ſhipt off for *Hamburgh*, and after they had already ſuffered the Diminution from the *Weſt-Indies*. Therefore it cannot be ſuppoſed, that theſe Sugars ſhould loſe 5 *per Cent.* more in the Voyage from *France* to *Hamburgh*, and I think, that, with the Addition of $1\frac{1}{2}$ *per Cent.* to the Number

Number of *French* Pounds, you have the Weight, which the Casks ſhould yield at *Hamburgh*.

3) You add the Premium of 4 *per Cent.* to the Value of the Cargo: In this Caſe that ſhould not at all take Place, but if you chuſe to make up the Account thus, they ſhould at the ſame Time be added to the Loſs. To explain which I will ſuppoſe,

A. and *B.* ſhip 800 Ounces of Silver, and have it inſured at 4 *per Cent.* to receive 98 *per Cent.* The Value of this Silver is 5 *s.* for an Ounce. If the Ship is loſt, *A.* receives for £. 400, a 98 *per Cent.* - £. 392
and *B.* the ſame - - - 392

£. 784

Suppoſe that of this Silver, during the Voyage, $\frac{1}{4}$ had been diminiſhed, and the whole Parcel ſo reduced as only to produce $\frac{3}{4}$, that is an Average or Loſs, what ever it is called, of 25 *per Cent.* and *A.* in Caſe of a total Loſs, would recover 100 *per Cent.* leſs 2 *per Cent.* or in other Words, if *A.* by a Loſs of £. 400, has a Right to recover 392 £. ſo by the Loſs of a quarter Part of £. 400, he is entitled to $\frac{1}{4}$ of 392, or 98 £. That is underſtood of itſelf and requires no Demonſtration.

Let us now ſee if your Way to adjuſt this Average will produce 98 *per Cent.* If it does not, it will be wrong. Suppoſe the Loſs to be as above 25 *per Cent.* on 800 £. - £. 200

The Cargo as above - - £. 800
The Premium of 4 *per Cent.* added 32

£. 832

To know what is to be received you ſay:

If *l.* 832 loſe *l.* 200, *l.* 100 will loſe *l.* 24 : : 9 $\frac{1}{4}$ *d.* *A.* is inſured for *l.* 400, which at 98 *per Cent.* are *l.* 392, and theſe at *l.* 24 : : 9 $\frac{1}{4}$ *d.* are *l.* 94 : 4 : 6; but *A.* ſhould receive 98 *l.* therefore I conclude this Way to be erroneous.

CASE XXVII.

Per Contra.

Suppoſe the Loſs to be as above	-	*l.* 200
The Premium of 4 *per Cent.* added	-	8
		l. 208
The Cargo and Premium as above	*l.* 832	

To know what is to be recovered I ſay:

If *l.* 832 loſe *l.* 208, *l.* 100 loſe 25 *per Cent.* *A.* is inſured for *l.* 400, which at 48 *per Cent.* are *l.* 392, and theſe at 25 *per Cent.* are *l.* 98, the juſt Sum which *A.* is entitled to recover.

I flatter myſelf, that I conſidered this Affair impartially; however, if I ſhould be in the wrong, I ſhall be glad to be better informed.

To *B.*
Meſſrs. *G.* and *G.*

N°. P.

Duplicate for the L. A. C°.

ON Mr. *B*-'s Remarks on the Adjuſtment of the Average of the Sugars in the Ship *Commerce* is to be obſerved:

1) That the Reaſon to deduct 1 *per Cent.* of the Price of $9\frac{3}{4}$ *d.* for which according to the Broker's Declaration the Sugars would have been ſold, if not damaged, is, that that perhaps was the Market Price by ſome private Sales; But it is known, that for ſuch private Sales the Buyers do not pay till two or three Months after, and this it is thought was done ſooner by this public Sale; and if we are to make good the Loſs againſt the Market Price of $9\frac{3}{4}$ *d.* this Diſcount, or this 1 *per Cent.* which was left out on Account of the different Prompts for Payment, muſt either be deducted on none or both the Accounts, or it muſt be proved, that there is no Difference in the Time of Payment.

2) That the deducting of 5 *per Cent.* was not only on Account of the Deficiency of Weight, which generally occurs by

by brown Sugars, and that thereby it is not yet ſufficiently proved, that 100 lb. *French* Weight make 101½ lb. in *Hamburgh.* CASE XXVII.

But Mr. *B.* is in the Right to ſay, that this alone cannot make any material Difference, and even by the *&c.* of our Account it was intended to intimate more, and by Word of Mouth it was alſo hinted to Mr. *G.* that, if we were to contribute according to the Market Price of 9¾ *d.* it was but juſt we ſhould inquire, whether in that Price any Profit was comprehended or not?

It muſt not be thought, that we by this intended to deprive them of their Profit, but our View is to let them bear their Share of the Loſs for what they were uninſured; and therefore I reckoned theſe 120031 lb. Sugars

Deduct 17 *per Ct.*	26405 Tare	
99626 lb. in *France* coſt at 34 £. 10 *s.*		£. 34370 : 19
3½ *per Cent.* Charges and Commiſſion		1202 : 19
		£. 35573 : 18
a 174 *per Cent.* -		*Mks.* 20444 : 12
Aſſurance 21750 *Mks.* a 4 *per Cent.*		870
		Mks. 21314 : 12

Which, if not damaged, it is likely would have produced *Mks.* 27731

I reckoned for Freight, Duty and Charges at *Hamburgh* 7 *per Cent.* - - 1941

25790 :

Remains for Profit - *Mks.* 4476 : 12

For which Profit of *Mks.* 4476 : 12 the Owners ought to bear their Share, as Mr. *B.* himſelf on further Conſideration will find it, and he may refer his Friends to the *Hamburgher Aſſurance Laws, Tit. XXI. Art.* 14. where it is ſaid: "When a N°. Q.

CASE XXVII.

" particular Average happens, and the Policy is not valued, the " Average shall be adjusted according to what the Goods with " Charges a-board did cost, as *per* Invoice, with the Premium, " and what they fetched by their Sale, and if it should be " found, that by a public Sale they fetched more than they " cost, the Owners are to bear their Proportion in the Average " for the Amount of that Profit." And thus it is computed, that, in order to make good on the *Mks.* 25790 the *Mks.* 8859, which are wanting, it is on *Mks.* 4476 : 12 Profit *Mks.* 1539, and that amounts to $5\frac{1}{2}$ *per Cent.* on *Mks.* 27731 : 2, whereas in the former Calculation only 5 *per Cent.* are found.

Moreover it is not sufficient to pretend to a Price of $9\frac{3}{4}$ *d.* for all these Sugars, on a mere Declaration of Brokers; but it ought to be proved, that sound Sugars of the same Quality, by large Parcels really sold, do in an Average render $9\frac{3}{4}$ *d.* for the suffering Assurer is no ways obliged to pay the highest Market Price.

Nay, if even it could be proved, that 100 lb. *French* Weight produce fully $101\frac{1}{2}$ lb. at *Hamburgh*, and the Sugars were really worth $9\frac{3}{4}$ *d.* ready Money, still this Average would not exceed $8\frac{1}{2}$ *per Cent.* It cannot be unknown to Mr. *B.* that others often insisted to pay no more than what the Owners fell short of the Cost and Premium, and if thus we reckon, that the Cost and Premium of these damaged Sugars amount to

B°. Mks. 21314 : 12

The Produce, as *per* Account Sales, is - *Mks.* 19111 : 2

Deduct for extraordinary Charges *Mks.* 239 : 3

For Freight, Duty, *&c.* reckon 1530 : 13

1770

17341 : 2

Thus there is only short upon the Whole *Mks.* 3973 : 10

Brought

CASE XXVII.

	Brought over	*Mks.* 3973 : 10
General Average	- -	1430
		Mks. 5403 : 10
	a 35 *s.* -	*£.* 411 : 14

which divided on *£.* 7645 : 12 would be $5\frac{3}{8}$ *per Cent.*

But I am convinced, that the firſt Account is the juſteſt, and that the ſame may be proved by the Example produced by Mr. *B.*; for it appears by it, that the whole Value of the Capital is - - - *£.* 7333 : 11
Premium - - - 312 : 1
£. 7645 : 12

And that the Company is therein concerned for 5880 *£. viz.*

For Premium - - -	*£.* 240
Capital - - - -	5640
	£. 5880

Whatever you call the Goods, in order to diſcover the Loſs, two Things muſt be examined: N°. R.

1) *What melted away?*

2) *How much of what remained was worſe in Quality?*

What melted away appears, *viz.*

120031 lb. *French* Weight a $101\frac{1}{2}$ *per Ct.* in *Hamburgh* *lb.* 121831

For which there were only found in *Hamburgh* - - - - 105029

Loſs on the Weight *lb.* 16802

Which on 121831 lb. is - - $13\frac{79}{100}$ *per Cent.*

Brought

CASE XXVII.

Brought over 13 $\frac{79}{100}$ *per Cent.*

The Quality was found worſe, *viz.*

105029 *lb.* found at *Hamburgh*
Deduct 1050 a 1 *per Cent.* for good Weight.

103979 *lb.*
Deduct 20796 Tare, a 20 *per Cent.*

83183 *lb.* a 9 $\frac{3}{4}$ *d. Mks.* 25344 : 13
Deduct 8 $\frac{2}{3}$ *per Cent.* 2021 : 5

Mks. 23323 : 8
Sold at *Hamburgh* for 18871 : 15

Loſs on the Quality *Mks.* 4451 : 9 - 19 $\frac{8}{100}$ *per Cent.*

32 $\frac{87}{100}$ *per Cent.*

The whole Cargo of Sugars with the Premium amounts to £. 7645 : 12, and the Amount of theſe damaged Sugars is with the Premium *Mks.* 21314 : 12, a 35 *s.* is £. 1623 : 19 : 7.

Thus if on £. 7645 : 12, a 32 $\frac{87}{100}$ *per Cent.* are to be divided, it will correſpond on £. 1623 : 19 : 7 - - 7 *per Cent.*

And further the general Average *Mks.* 1430 on £. 6645 : 12 is £. 108 $\frac{20}{21}$, and on £. 100 - - - - 1 $\frac{42}{100}$ *per Cent.*

Together 8 $\frac{42}{100}$ *per Cent.*

Whatever it is called, and it would be leſs in Caſe it ſhould be proved, that Sugars in Quantities and of the ſame Quality were at that Time ſold for leſs than 9 $\frac{3}{4}$ *d.* ready Money, and that the Weight of brown Sugars from *France* has produced leſs than 101 $\frac{1}{2}$ lb. at *Hamburgh*, and that ſome Caſks of this Parcel of brown Sugars did in Reality not ſuffer any Sea-Damage, on which then there would be no Allowance for Difference of Price.

For

CASE XXVII. N°. S.

For further Demonſtration let us ſuppoſe for Inſtance: that of

100 ſhipt off from *France* 20 were melted away, or loſt, then the Aſſurers, who ſigned to pay 98 *per Cent.* muſt make good - - - - - - - $19\frac{3}{5}$

And ſuppoſe, that the remaining 80 all ſomewhat damaged, if arrived ſound, might have produced

		100
Deduct 10 *per cent.* ordinary Charges		10
Neat		90

But now they are damaged they only produce - - - - - - 50

And pay the ſame ordinary Charges	10		
and extraordinary ditto -	5		
		15	
			35
		98	55
Deduct from the above -		$19\frac{3}{5}$	
Then on 90 are 55 loſt, is on -		$78\frac{2}{5}$	$47\frac{82}{90}$
And thus for the Aſſurers is in the Whole loſt			$67\frac{46}{90}$

Which is the very ſame as ſaying, that for 100 if they were all arrived ſound, would have been received - - - - - - - 125

Deduct 10 *per cent.* for ordinary Expences $12\frac{1}{2}$

$112\frac{1}{2}$

But now there only arrived 80, and being damaged only produced 50

Deduct Charges - - 15

35

Loſs $77\frac{1}{2}$

Thus on $112\frac{1}{2}$ are loſt $77\frac{1}{2}$, and for the Aſſurers, as before, on 98 - - - $67\frac{46}{100}$

And

CASE XXVII. And if theſe 100, of which 20 melted away, and 80 arrived damaged, had been comprehended in a Parcel of 1000 in the whole ſhipped off, then the Aſſurers would only have paid 6 $\frac{676}{900}$ for their 98, whatever it is called.

N°. T. And thus for the £. 1623 : 19 : 7 partly melted away and partly damaged, the Diviſion made Page 352, muſt be allowed to be juſt. However as the Difference in the Loſs of Weight and of the Prices between a public and a private Sale might not perhaps be quite ſo much; it was agreed that the Difference between the Demand of £. 692 : 7 made by the Aſſured at *Hamburgh*, page 338, and the Offer of £. 505 : 13 : 7 made by the Aſſurers at *London*, page 346, ſhould be ſplit; which was done to reciprocal Satisfaction.

CASE XXVIII.

Shewing in what Manner the Charges on Goods ſaved from a Shipwreck near Cadiz, *were proportioned, and what Freight was allowed thereon.*

ANNO 1726, when *N. M.* lived at *Cadiz*, a *French* Ship called *la Fidela*, from *Hamburgh*, loaden with Bale Goods and Wood, bound for *Cadiz* and *Malaga*, run upon the Rocks lying off the *Scipiona*, where ſhe beat to Pieces, and what Cargo ſhe had of Wood drove out of her, and Part of the Bale Goods ſunk to the Bottom: Whereupon the Governor of *Rota* immediately interpoſed, and made the neceſſary Diſpoſitions to ſave what he could, and afterwards gave in the following Account of Salvage Charges:

N°. A.

For 150 Cart-loads which were carried in 5 Days by 5 Carts from aboard of the Barks, and from the Strands of *Nra. Sa. de Regla*	*Dol.*	33 : 5
314 Days Labourers, a 5 *Rs. Vn.* -		104 :
63 Voyages made by the Barks, a 1 Dol.		63 :
430 Days paid to Mariners employed in the Barks, a 4 - -		115 :
Wine and Bread -		32 :
Salaries to 12 Horſemen for 6 Days and Nights to guard the Coaſt -		72 :

Victual-

CASE XXVIII.

Victualling 15 Men for 11 Days -	120 :
Charges of Notifications and Diſpoſitions made at *Cadiz* and St. *Lucar* to ſave the floating Wood -	100 :
For diving - -	175 :
For the Governor's Trouble and Treats in all agreed for 19 Days Attendance -	485 : 10
For waſhing the Goods ſaved he has diſburſed	230 :
Paid in all to the Governor *Dol.*	1530 :
Rpt.	12240

Who thereupon, at the Requeſt of the Concerned in the Cargo, delivered up the Goods ſaved, and the further Management of the Whole, to the *Hamburgh* Conſul, who afterwards delivered in the farther Account of Salvage as follows:

For the Aſſiſtance of a Notary at the Delivery of the Goods ſaved -	64 :
A Letter of Attorney from the Concerned	48 :
Horſe-hire and Chaiſes, backwards and forwards from *Scipiona* -	140 :
17 Cart-loads of Goods from *Scipiona* to *St. Lucar*, a 7 R. - -	119 :
Loading and unloading - -	34 :
4 Permits from the Cuſtom-Houſe -	48 :
4 Cumplidos - -	16 :
Small Expences at *Scipiona* - -	76 :
4 Expreſſes ſent - - -	8 :
A Perſon to watch the Goods -	16 :
Proviſions and Expences paid at *Scipiona* for the Captains, Sailors, *&c.* -	492 :
6 Dol. to *Martines*'s Wife - -	48 :
The Aſſiſtance of *Martines*, Inhabitant of *Scipiona*, at the diving for the Goods ſaved, and delivering them out to be waſhed	303 $\frac{1}{2}$
The public Cryer of the Sale -	8 :

CASE XXVIII.

The Notary who aſſiſted at the Sale -	134 :
D. L. the Conſul's Commiſſion in the Whole was allowed by the Concerned	2 : 400 :
The Trouble of *Hinſch* and *Labée*, who had been a-board of the Ship, having chartered the ſame, and took great Care of the Salvage - -	800 :
The Governor of *Rota* was farther allowed for certain Conſiderations, the Value of Goods he took to himſelf out of the Salvage, in the Whole -	1 : 165 $\frac{3}{4}$
Certificate of the whole Tranſaction paid to the Notary - -	40 :
Rp.	18 : 200 :

And the Goods ſaved in all were found to be and ſold,

Per 4128 $\frac{1}{4}$	Rp. the Wood	for Account of his Charterers a-board *Hinſch* and *Labee*
24746 $\frac{3}{4}$	the Goods	
10824	Goods for Account of *De la Campe*	
1245 $\frac{1}{4}$	Ditto for Account of *Doorman*	
1402 $\frac{3}{4}$	Ditto for Account of a Perſon at *Malaga*	
9144	Ditto for Account of *Magens.*	
51491 Rpt.	So that the neat Salvage produced only	33291
		51497

N°. B. And as it was left to *N. M.* to make the Repartition, he conſidered that inaſmuch as Part of this Salvage was the Produce of Wood, the ſaving whereof occaſioned the greateſt Part of the Boat-hire and Cartage, and likewiſe in Reſpect of Freight, Wood ought to bear much more than Bale Goods. An equal Proportion upon the Value of theſe Articles would be unjuſt; he therefore ſeparated from the above Account the Articles of Cartage

tage and Boat-hire, amounting to 137 Dol. 5, and 100 Dol. for other Diſpoſitions to guard and recover the floating Wood; and ſo in Proportion of what its Freight amounted to, he found it correſponded nearly to $\frac{2}{3}$ thereof upon the Wood ſeparately, being - - - *Rp.* 1267 CASE XXVIII.

But the remaining Part of the above 18200 *Rpt.* being Rpt. 16932 $\frac{3}{4}$ might be born proportionably to what the Goods ſaved had produced in Value, and ſo he divided the ſame as follows, *viz.*

From the Governor's Account.

Per $\frac{1}{3}$ of 137 Dol. 5 Cartage and Labourers - -		*Rp.* 367
Boat-hire of the Goods	63 Dol.	504
430 Days Mariners	115	920
Wine and Bread	32	256
Diving -	175	1400
Waſhing -	230	1840
		5287

And reparted on the Goods ſaved by the Governor. N. C.

Per	9749 Rs. for *De la Camp*	*Rpt.* 1326	
	18568 $\frac{3}{4}$ for *Hinſch* and *Labée*	2526	
	1402 $\frac{3}{4}$ for a Perſon at *Malaga*	191	
	9144 for *N. Magens* -	1244	
			5287

From the Conſul D. Lepin's *Account, ſaved by his Care.*

Per	1075 Rs. Goods for *De la Camp*	303 $\frac{1}{4}$ Waſhing	*Rs.* 38	
	6179 for *Hinſch* and *Labée*		220 $\frac{1}{4}$	
	1245 for *Doorman*		45	
	8499			303 $\frac{1}{4}$

CASE XXVIII.

From Ditto Account.

For Charges of Goods transported to St. Lucar,

Per 9441 Rs. for *De la Camp*
22730 for *Hinsch* and *Labée*
1245 for *Doorman*
9144 for *N. Magens*

	Rs.
Cart-hire	153
A Watchman	16
Permits	64
Public Sale	142
Rs.	375

Corresponds *per De la Camp*	Rs.	80½
per Hinsch and *Labée*		194
per a Person at *Maloga*		12
per Doorman -		10½
per N. Magens -		78
		375

On the general Charges from the Governor's Account.

Per ⅓ of 800 Rpt. at *Cadiz* and *St. Lucar*	Rpt.	267
Guarding the Coast -		576
Victuals - -		960
The Governor's Trouble and Charges from the Consul's Account		3883
Notary -		64
Letters of Attorney -		48
Horse and Chaise-hire -		140
Divers Charges - -		76
Victuals - -		492
Ditto - - -		48
Expresses - -		8
More allowed to the Governor		603
Hinsch and *Labée*'s Charges		562
Certificates - -		40
Commission for the Consul		2400
for *Hinsch* and *Labée*		800
Rp.		10967¾

To

CASE XXVIII.

To be reparted.

on	4128 ¼	Wood	for *Hinſch*	Rpt. 6151
	1568 ¾	Goods		
	6179	ditto		
	9749	ditto	for *De la Camp*	2305
	1075	ditto		
	1245 ¼	ditto	for *Doorman*	265
	1402 ¾	ditto	for a Perſon at *Malaga*	297 ¾
	9144	ditto	for *N. Magens*	1949
				10 : 967 ¾

Rpt. 18 : 200

Now the Queſtion remained, what Freight ought to be allowed to the Captain for the Goods ſaved, and how to proportion the ſame? N°. D.

Whereupon two Merchants were named as Arbitrators, who gave it as their Opinion, that the Captain ſhould be allowed 200 Dol. in the Whole for Freight, and the ſame be recovered upon the Value of the beforementioned 5 491 Rpt. a *rata* of each Perſon's Share therein: Which Opinion *N. M.* rejected as being not conſiſtent with Juſtice.

For according to this Order, *N. M.* would be obliged to pay 284 Rpt. Freight for the Goods ſaved for his Account, amounting to 9144 Rs Plate; whereas by the Bill of Lading it appeared, that if his Goods had arrived ſafe, the Freight ſtipulated to have been paid for the Whole, was but 18 Ducats or 198 Rpt. N°. E.

Now as there were ſaved but 500 ps. of his Goods, which conſiſted in 4 Cheſts HR. N°. 1 a 4, containing 640 ps. Dimities, ſo from theſe - *Rpta.* 198

Unqueſtionably ought to be deducted the Proportion for 140 ps. - 43

Rpt. 155

And

CASE XXVIII. And then according to a moſt juſt Doctrine laid down by *Adrian Verwer*, in his curious Annotations upon the Sea-Laws of *Philip* II. pag. 137;

N°. F. " That whatever Diminution the Shipper of Goods on board " ſuſtained by the Shipwreck and Salvage Charges (by comput- " ing what ſuch Goods would have produced had they arrived " ſafe) the ſame proportionate Diminution the Maſter of the " Ship ought to bear in his Freight."

Then from the above -		*Rpt.* 155
ſhould be deducted at leaſt $\frac{1}{4}$ for Decreaſe in Value by having been damaged, is -		39
		Rpt. 116
And whereas to ſave theſe 116 Rpt. upon 9144 Rpt. it coſt 3271 Rpt. Charges, the Proportion is - -		41
So the Freight to be paid by *Nicolas Magens* ought to be no more than -		*Rpt.* 75
And from *De la Camp*, his Bill of Lading being 18 Ducats	*Rpt.* 198	
ſhould be deducted for 1800 Varas Morleſes not ſaved -	30	
	Rpt. 168	
For diving $\frac{1}{3}$ Part of 1 Pack Tickings, and 528 Varas Crudos not ſaved	18	
	Rpt. 150	
For Loſs in Value $\frac{1}{4}$	$37\frac{1}{2}$	
	Rpt. $112\frac{1}{2}$	
For Charges of Salvage on Rpt. 10824 $3749\frac{1}{2}$ -	$39\frac{1}{2}$	

CASE XXVIII.

For the Perſon in *Malaga* 3 D. a 11 R. -	33	
$\frac{1}{4}$ Loſs in Value -	$8\frac{1}{4}$	
	Rpt. $24\frac{3}{4}$	
Charges on $1402\frac{3}{4}$ R. made 501, is -	$8\frac{1}{4}$	
		$16\frac{2}{1}$
For *Doorman* 3 D.	*Rpt.* 33	
$\frac{1}{4}$ Loſs in Value	$8\frac{1}{4}$	
	Rpt. $24\frac{3}{4}$	
$\frac{1}{3}$ Diving	$8\frac{1}{4}$	
	Rpt. 16	
Charges on $1245\frac{1}{4}$ R. 320 is	4	
		12
		Rpt. $176\frac{1}{2}$

And as the Goods ſaved for the Freighters, *Hinſch* and *Labée*, in the Whole amounted but to a little more than the above Goods together, the Freight in Proportion for them ought not to be above - 200

And in Regard to the Wood ſaved for them, its Sale amounted but to *Rpt.* $4128\frac{1}{4}$

And the Salvage Charges above particularized together, to - 2146

Remains neat *Rpt.* 1982

Whereof at fartheſt a Third of its Value might be allowed for Freight - - 661

So that the Arbitrators in the Whole ſhould not have allowed for Freight above *Rpt.* $1037\frac{1}{2}$

And

CASE XXVIII. N°. G.

And as the Juſtice hereof appeared ſo clear, the former Opinion was ſet aſide, and the laſt Account admitted as a juſt one, not only between the Concerned at *Cadiz*, but alſo by the Principals and Inſurers at *Hamburgh* in the ſame Manner.

CASE XXIX.

BY the Caſe of the *Nimfa* Prize from *Liſbon* to *London*, which was loſt near *Beachy-Head*, as deſcribed in *Caſe* XVIII. N°. N.

For the $\frac{3}{4}$ Part of the Quickſilver ſhe had aboard, it was admitted that there ſhould have been paid at her Arrival in *London*, Freight - - £. 125

But the Ship being loſt as aforeſaid, and $5\ \frac{3}{10}$ *per cent.* was miſſing of the Quickſilver, $17\frac{3}{4}$ *per cent.* the Salvage Charges amounted to,

We the Arbitrators were unanimous, that the ſame Proportion ought to be paid leſs in the Freight, and ſo deducted $23\ \frac{1}{20}$ *per cent.* - 28 : 16 : 3

N°. A. Due for the Freight - £. 96 : 3 : 9

But they were retained on Account of 8 Cheſts more of Quickſilver being ſaved, which were abandoned to the Sellers.

CASE

CASE XXX.

CASE XXX.

Proving that too much Freight was allowed on the Loading which was ſaved, out of a Ship which was wrecked near Marſeilles.

ON the 30th of *April*, 1753, in the Council-Chamber at the Town-Houſe of *Marſeilles*. N°. A.

WE *Lazarus de Gerin Ricard*, King's Counſellor, Lieutenant of civil and criminal Cauſes in the Admiralty of this City, make known, That in Conſequence of a Petition to us preſented by Capt. *Andrew Doets*, of the *Dutch* Nation, heretofore Commander of the Ship *Matthew*, the 24th of *January* laſt, againſt Meſſrs. *Gampert* and *Whatley* (to whom the Cargo of the ſaid Ship was conſigned) and the Concerned therein, Strangers as well as others, tending to a Regulation of the Charges of Salvage in Manner of an Average, and of another alſo preſented to us by the ſaid Meſſrs. *Gampert* and *Whatley* againſt the Concerneds in the ſaid Ship, as alſo the Inſurers thereon, Strangers as well as others, dated the 8th of *February* laſt, towards a Regulation of the particular Average of Damages to be borne by the Hemp and Iron laden on board the ſaid Ship, and of the Ordonnance by us iſſued in Conſequence thereof, on the 26th of *January* and 19th of *February*, intimating that neceſſary Documents ſhould be remitted to, and laid before us, within three Days, in order to proceed toward ſettling and adjuſting the ſaid Average. In purſuance whereof, Mr. *Lejeans*, Sollicitor to the ſaid Captain *Doets*, and *M. Monier*, Sollicitor for the adverſe Party, the ſaid Meſſrs. *Gampert* and *Whatley* having produced each of them their reſpective Documents and Inſtruments, they were laid before us and examined; after which Peruſal and Examination we find them to conſiſt as follows, *viz.* Thoſe in the Parcel of the aforeſaid Captain *Doets* conſiſt in an Abſtract of a Proceſs made by the Officers of the Admi-

CASE XXX.

ralty at *Arles*, touching the Shipwreck and Salvage of the aforesaid Ship the *Matthew*, on the 15th Day of *December* last, and other following Days. The Abstract of a Protest made by the said Captain *Doets* before the said Officers of the Admiralty at *Arles*, the 16th of the said Month of *December* last. Abstract of another Declaration of the said Captain *Doets* touching the unrigging of his Ship, and the Condition he quitted her in, where she lay stranded on the 28th of the said Month. A Petition for Sale, *&c.* of the Hull and Rigging of the aforementioned Ship, presented by the said Capt. *Doets* the 5th of the said Month of *January* against the said Messrs. *Gampert* and *Whatley*, and the Concerneds therein, and Insurers thereon, Strangers or others, with the Certificate of the Summons copied at Foot, made by *Castagne*, Huissier or Summonser, the same Day, which was duly controlled by *Crequi*. Abstract of a Sentence ordering the Sale of the said Ship and Rigging of the 9th of the said Month of *January*, with the Receipt copied at Foot thereof on the Part of *M. Monier*, adverse Sollicitor, and the Summons made and delivered to the said Messrs. *Gampert* and *Whatley*, and to the said Assurers, with Assignment to them to proceed to the Sale of the Hull and Keel of the said Ship, and of the Rigging, Tackle, *&c.* of the same on the 20th of the said Month of *January*, made by the said *Castagne* duly controlled by the said *Crequi*. The verbal Process and Charges in the public Sale of the said Rigging, *&c.* of the 22d of *February* last, with the Summons made to the Bidders or Purchasers of the 23d of the said Month by the said *Castagne* duly controlled. Another Ordinance, enjoining the Delivery of the said Rigging, *&c.* in Favour of *Maurice Giraudin* for the Sum of Livres 6600, of the 8th of *March* last, with the Summons and Precept of Payment at Foot, made to the said *Giraudin*, and delivered by the said Serjeant, duly controlled by the said *Crequi*. A Summons to plead, of the 8th of the said *March* last, with Receipt copied at Foot, on the Part of *M. Monier*, adverse Sollicitor. Abstract of a Sentence importing that the Amount of the Sale or Value of the Rigging, Tackle, *&c.* sold and deposited in the Registry, should be delivered to the said Messrs.

Gampert

CASE XXX.

Gampert and *Whatley* on the 16th of *March* laſt, with a Summons or Execution of Judgment at Foot, made to *M. Merandol*, the Regiſter, on the 17th of the ſaid Month, by the ſaid *Caſtagne*, duly controlled. A Duplicate of an Appearance laid before the Regiſter by the aforeſaid *M. Lejeans*, Sollicitor for the ſaid Capt. *Doets*, the 17th of the ſaid *March*, on the Repreſentation of Capt. *Dalleſt* relating to the Undervalue of the Rigging, *&c.* of the ſaid 16th of *March*. The Petition for Regulation and Adjuſtment of the general and particular Average, preſented by the ſaid Capt. *Doets* the 24th of *January* laſt, againſt the ſaid Meſſrs. *Gampert* and *Whatley*, as well as the Inſurers and others concerned therein, as well Foreigners as others, with the Summons at Foot, made to them by the ſaid *Caſtagne*, duly controlled by the ſaid *Crequi*. Abſtract of the Ordinance directing the Junction of both Motions, for the Adjuſtment of the Average of the 10th current, with the Receipt at Foot. On the Part of *M. Monier*, adverſe Sollicitor, Duplicate of a of Salvage Charges of the Ship and Cargo communicated the 12th current, as appears alſo by the Receipt copied at Foot on the Part of *M. Monier*, adverſe Sollicitor. Duplicate of an Account of Freight of 165 Bales of Hemp, communicated the ſaid Day, with Copy of the Receipt at Foot on the Part of the ſaid *M. Monier*. An Account of Sales of the Rigging, *&c.* of the aforeſaid Ship the *Matthew*, and their nett Proceeds, communicated the ſaid 21ſt current, as appears by the Receipt, Copy whereof at Foot, on the Part of the ſaid Mr. *Monier*, adverſe Solicitor. Inventory of the ſeveral Pieces or Documents of the ſaid Capt. *Doets*, the 21ſt current, with Copy of the Receipt at Foot, on the Part of the ſaid *Monier*, adverſe Sollicitor. In the Parcel of the ſaid Meſſrs. *Gampert* and *Whatley*, a Summons to the Proteſt, made by the Perſons who brought the Rigging, *&c.* of the ſaid Ship *Matthew* hither, with a Sentence of Judgment thereon, made to the ſaid Perſons the 22d of *December* laſt, by *Caſtagne*, duly controlled by *Crequi*. A Petition preſented againſt the ſaid Perſons for Recovery of the Hemp ſaved, the ſame Day, with the Sentence at Foot, delivered by the

CASE XXX.

ſaid *Caſtagne*, duly controlled by the ſaid *Crequi*. Duplicate of a Preſentation made in Court, by *M. Monier*, adverſe Sollicitor, of the ſaid Meſſrs. *Gampert* and *Whatley*, upon the Petition for Sale of the ſaid Ship, Rigging, &c. the ſame Day, with the Receipt at Foot on the Part of Mr. *Lejeans*, adverſe Sollicitor. Duplicate of another Repreſentation laid before the Regiſtry by the ſaid *M. Monier*, Sollicitor for the ſaid Meſſrs. *Gampert* and *Whatley*, the 26th of *January* laſt, on the Petition for the Regulation of the Average of the ſaid Capt. *Doets*. The Defence of the ſaid Petition of the 23d of ſaid Month, with Copy of the Receipt at Foot, on the Part of the ſaid *M. Lejeans*, adverſe Sollicitor, of the ſame Day. The Petition preſented by the ſaid Meſſrs. *Gampert* and *Whatley*, the ſaid 8th *February* laſt, againſt the Concerneds, or Owners of the Ship, and Inſurers thereof, as well Strangers as others, in Regulation of the particular Average, with Summons at Foot, made to the ſaid Concerneds and Inſurers, in the Name and Perſon of the King's Sollicitor, on the ſame Day, made by the ſaid *Caſtagne*, duly controlled by the ſaid *Crequi*. Abſtract of an Ordinance of the ſeveral Papers and Documents produced agreeable thereto, and in the mean Time an Eſtimation of Damage of the Hemp, of the 9th of the ſaid Month, with a Summons at Foot, to proceed to the Eſtimation of the ſaid Damages, made by the ſaid Serjeant duly controlled. Abſtract of a Report of the Damage ſuſtained by the Hemp, of the 12th of *March* laſt, with the Summons at Foot, made to the Concerneds and Inſurers on the 14th of the ſaid Month, by the ſaid Serjeant, duly controlled. Abſtract of a Letter of Attorney, made from the ſaid Meſſ. *Gampert* and *Whatley*, in Favour of Mr. *Monier* their Sollicitor, by Mr. *Begue*, Notary Publ. with Copy of the Receipt at Foot, on the Part of the ſaid Mr. *Lejeans*, adverſe Sollicitor. Duplicate of a Proteſt, made by Capt. *Doets* before the Officers of the Admiralty at *Arles*, the 16 *December* laſt, communicated the 12 Inſtant, as appears by the Receipt copied at Foot, on the Part of the ſaid Mr. *Lejeans*, adverſe Sollicitor. Duplicate of a Declaration, made by Capt. *Doets*, before the ſaid Officers of the Admiralty at *Arles* the 22 *December*, with Copy of the Receipt at Foot, on the Part of

of Mr. *Lejeans*, adverse Sollicitor, on the said Day instant. State of the Charges arising from the Salvage of the Cargo, Rigging, *&c.* of the Ship *Matthew*, on the said 12 of this Month, with Copy of the Receipt at Foot, on the Part of Mr. *Lejeans*, adverse Sollicitor. Duplicate of an Account of Sales of 829 Bars of Iron, communicated the said Day, as appears by the Copy of the Receipt at Foot, on the Part of the said Mr. *Lejeans*, adverse Sollicitor, on the same Day. Duplicate of an Account of Sales of one hundred and sixty five Bales of Hemp, with the same Receipt copied at Foot, on the Part of the said Mr. *Lejeans*, adverse Sollicitor, on the said 12 Instant. An Inventory of Communication of the several original Papers and Documents of the said Messf. *Gampert* and *Whatley*, on the same Day, with the said Receipt copied at Foot, on the Part of the said Mr. *Lejeans*, adverse Sollicitor. And generally, all and each of the necessary Documents to us remitted and delivered by the Sollicitors of the said Parties, nothing being admitted or introduced, in Behalf of the Concerneds therein, or Insurers thereof, Strangers as well as others. The which Premisses being thus laid before us, and duely examined, we proceed to the Regulation of the General and Particular Average in the following Manner: CASE XXX.

General Average *on the Ship* Matthew, *Capt.* Andrew Doets, *a Hollander.* N°. B.

Loaden at Petersburg *and consigned to Messf.* Gampert *and* Whatley.

165 Bales Hemp, which produced 1711 Bundles, and sold as follows:

1687 Bundles, weighing 319457 *lb.* at Liv. 17 : 17 : 6 *per* ℔ amounts to		
Liv.	57102 : 18 :	9
24 Bundles weight 1830 *lb.* at Liv. 11 : 8 : 4 *per* ℔ is - -	575 : 11 :	6
8107 *lb.* damaged at Liv. 5	405 : 7	
Liv.	58083 : 17 :	3

To

CASE XXX.

To be deducted
Freight *Liv.* 12126
Charges of Sale - 580 : 17 : 3
Charges of Salvage and Freight to this City 6146
} 18852 : 17 : 3

Liv. 39231

General Average thereon at L. 4 : 2 - - *L.* 1608 : 9 : 5

Loaden and consigned as above.

483 Bars broad Iron, weight 29734 *lb.* at L. 11
L. 3270 : 14 : 9
346 small ditto weight 7867 *lb.* at Liv. 12 : 10 983 : 7 : 6

L. 4254 : 2 : 3

To be deducted
Charges of Salvage & Freight to this City
L. 270
Charges of Sale 43 : 2 : 3
} 313 : 2 : 3

Liv. 3941 3941

General Average thereon at L. 4 : 2 *per* ℅ - 161 : 11 : 7

For

CASE XXX.

Brought over *Liv.* 43172	*Liv.* 1770 : 10	

For the Ship.

The Rigging, *&c.* sold at public Sale, the Hull being abandoned, produced nett, subtracting the Charges and a Deduction upon the Sale of the Anchors, which did not amount to the Weight in the Inventory *Liv.* 5952		
Charges of Salvage of the Rigging, *&c.* and Freight hither, which must be deducted 700		
Liv. 5252		
The Half of the above is to bear the general Average, and is - *L.* 2626		
General Average thereon at L. 4 : 2 *per* ℅	*Liv.* 107 : 13 : 4	

For Freight.

The Freight according to Charter Party amounts to Liv. 12372 : 11 : 9 which reduced is in Proportion as the Ship was

advanced

CASE XXX.

Brought over *Liv.* 45798		*Liv.* 1877 : 14 : 4
advanced in her Voyage to *L.* 12126		
Whereof half is to bear the general Average - -	6063	
General Average thereon at L. 4 : 2 *per* ℔ - -		248 : 11 : 8
	Liv. 51861	*Liv.* 2126 : 6

N°. C. Particulars *of those Articles which are to be included in the* General Average.

For an Express dispatched to *Marseilles* with Advice of the Ship running on Shore -	*Liv.* 25
Paid *Francis Bras* for his Assistance to Capt. *Doets*, as Boatswain and Interpreter - - -	204 : 10
For a Letter of Attorney in Favour of Capt. *Dalleſt* - - -	6
Paid to the Officers of the Admiralty at *Arles* - - -	736 : 7 : 6
Paid for Chaise-hire to carry Capt. *Dalleſt* twice to *Arles* and on the Beach, and Mr. *Bras* once and back again -	106 : 16
Expences of Mr. *Dalleſt*, during his Journey and Stay - - -	61 : 8 : 6
Paid *Schultz*, the *Dutch* Interpreter -	65 : 9
To Capt. *Dalleſt* for his Trouble -	240
Commission and Interest on Liv. 1205 Money advanced at 3 *per Cent.* -	36 : 3
Wages to the Sailors from the 14 *December* to the 3 *Jan.* at the Rate of 492 Livres *per* Month - -	328

Victualling

CASE XXX.

Victualling of the ſaid Sailors, being 11 Perſons, for 21 Days, make 231 Days, at 10 *d.* each - -	115 : 10	
Law Charges incurred by Capt. *Doets*	41	
Ditto of Meſſ. *Gampert* and *Whatley*	16 : 4 : 8	
For our Trouble and Salary -	102	
To the Regiſter for his Fees and Paper	34	
Abſtract - - - -	7 : 16 : 4	
	Liv. 2126 : 6	

Agreeable to the above Account by Us ſettled, it appears, that the Value of the Cargo of the aforeſaid Ship the *Matthew* amounts to the nett Sum of 51861 Livres, including the Half of the nett Proceeds of the Rigging, Tackle of the ſaid Ship, and of the Freight. Upon the which Sum we have divided that of 2126 Livres 6 Sols amount of the Salvage Charges of the Cargo of the ſaid Ship and the Rigging, *&c.* as aforeſaid, including our Salary and other Law Charges. And we find, that the General Average, of which this is Part, amounts to Livres 4 and Sols 2 for every hundred Livres, as is above adjuſted; whereof the Conſignee of the ſaid Cargo, and the Concerneds therein, Foreigners as well as others, each for their Share, are hereby enjoined Payment in 8 Days without Bail. To the Original dated as above, We have ſigned

GERIN RICARD.

Particular Average *on one hundred and ſixty five Bales of Hemp, laden on board the* Matthew, *Capt.* Andrew Doets. N°. D.

To the Conſignment of Meſſ. Gampert *and* Whatley.

The ſaid Hemp coſt, as paid for in *London* £. 1850 : 10 *Steel.* which at 32 *Pence Farthing per* Crown of 3 Livres make - - £. 41318	
Particular Average thereon £. 21 : 8 : 6 *per* Liv. 100 -	£. 8852 : 7 : 7

CASE XXX. N°. E.

Articles *included in the Particular Average.*

Paid *Antoine Jannas* for bringing hither the Goods, which he ſaved from the Wreck - -	*Liv.*	400
Honoré Marques - -		400
Felix Catelin - - -		400
Laurens Billet - - -		400
Langlade - - -		400
Valentine Cely - - -		400
Vincent Granier - - -		400
Mourat - - -		332
Louis Rouſtan - - -		90
James Fabreque - -		360
John Fabreque - -		360
Matthew Imbert - -		330
John Joſeph Pons - -		400
Joſeph Amiel - - -		294
Honoré Marques, for a ſecond Voyage		400
John Valentine - -		420
Honoré Lequel - - -		360
	Liv.	6146
Commiſſion and Intereſt on the Money paid to the above Perſons being Liv. 6146, at 3 *per Cent.* - -		184 : 7 : 7
	Liv.	6330 : 7 : 7
For Damage by Salt-Water on 6000 lb. of Hemp, ſettled by Perſons appointed to be Judges thereof, at Liv. 13 *per* 100 *lb.* - -		780
For the Share the Hemp bears in the general Average - -		1608 : 9 : 5
To the Perſon who judged the Damage and Extract of his Proceedings -		14 : 17 : 5
Charges on the Delivery of the Hemp -		31 : 9 : 6

Law

CASE XXX.

Law Charges in Regulating the Average	28	
For our Trouble and Salary - -	42	
To the Regiſter for extra Duty and Paper - - - -	14	
Abſtract - - - -	3 : 3 : 8	
	Liv. 8852 : 7 : 7	

Agreeable to the above Account it appears, that the Value of the Hemp, laden on board the *Matthew*, to the Conſignment of Meſſrs. *Gampert* and *Whatley*, amounts to the Sum of Livres 41318, upon which Sum we have divided that of 8852 Livres 7 Sols and 7 Deniers, Amount of the Salvage Charges to be born by the ſaid Hemp, including our Salary and other Law Charges, and we find, that the Particular Average amounts to 21 Livres 8 Sols and 6 Deniers for every hundred Livres, as is above adjuſted; whereof the Inſurers of the ſaid Hemp, as well Foreigners as others, each for their Share, are hereby enjoined Payment within 8 Days, without Bail. To the Original dated as above. We have ſigned

GERIN RICARD.

N°. F.

Particular Average *upon the Iron brought by the* Matthew, *Capt.* Andrew Doets, *to the Conſignment of Meſſ.* Gampert *and* Whatley, *amounting as* per *Invoice to* *Liv.* 3925

Particular Average, at Liv. 12 : 3 *per Cent.* - -	*Liv.* 476 : 17 : 9

Articles to be included in the Particular Average.

o r the Share the Iron bears in the General Average	*Liv.* 161 : 11 : 7
Paid *John Riviere*, for bringing the Iron from the Wreck hither and getting it out of the Ship - -	270

CASE XXX.

Intereſt and Commiſſion on the above Sum, a 3 *per Cent.* - - -			7 : 2
Law Charges - - - -			19 : 15 : 2
For our Trouble and Salary - -			13
To the Regiſter extra Fees and Paper			4 : 9
Abſtract - - -			1
		Liv.	476 : 17 : 9

Agreeable to the above Account by us ſettled, it appears, that the Value of the Iron brought by the *Matthew*, to the Conſignment of Meſſ. *Gampert* and *Whatley*, amounts to the Sum of 3925 *Livres*, upon which Sum we have divided 476 *Livres* 17 *Sols* and 9 *Deniers*, amount of the Salvage Charges of the ſaid Iron, including our Salary and other Law Charges. And we find, that the Particular Average thereof amounts to 12 *Livres* and 3 *Sols* for every hundred Livres, as is above adjuſted; whereof the Inſurers thereof, as well Strangers, as others, each for their Share, are hereby enjoined Payment, within 8 Days, without Bail. To the Original dated as above. We have ſigned.

GERIN RICARD.

N°. G. *We now proceed directly to ſettle what regards the Rigging, Tackle, &c. ſaved, the Hull being abandoned.*

The Rigging, Tackle, *&c.* being ſold at public Sale, produced *Liv.* 6600

From which deduct

Allowance made for the Anchors not anſwering the Weight ſpecified in the Invoice, and Charges thereon	*Liv.*	347 :	6 : 8
Carriage to the Warehouſe		69 :	3 : 6
Warehouſe Rent paid at *Lineſy* -		126	
Commiſſion on L.6252 : 3 : 4 at 2 *per Cent.* -		125 :	1

Charges

CASE XXX.

Charges of publick Sale, Duty for Depoſit, Acquittance and Controll	300 : 14 : 6	
Charges of putting up at the publick Sale, for the Sale, and Suit with the Buyers about the Allowance for the Anchors - -	70 : 13 : 4	
Freight of the Rigging, *&c.* from the Wreck to *Marſeilles* - -	700	
For our Trouble -	12	
To the Regiſter -	4	
Abſtract - -	1 : 1	
		1756
		Liv. 4844

Agreeable to the above Account the nett Proceed of the aboveſaid Rigging, Tackle, *&c.* of the ſaid Ship *Matthew*, amounts to 4844 *Livres*, as we have adjuſted it, which we have ordered to be laid before the Court, and all the Documents and Papers delivered us, as alſo our preſent Sentence and Determination. To the Original dated as above, We have ſigned

GERIN RICARD.

PIGNATEL.

WE LAZARUS DE GERIN RICARD, King's Counſellor, Lieutenant in civil and criminal Cauſes in the Admiralty of this City, certify and atteſt to whom it may concern, that Mr. PIGNATEL, who has ſigned the above Abſtract, is Regiſter to the ſaid Court, to whoſe Handwriting Credit is given, as well in all Things judicial, as otherwiſe. In Witneſs whereof We have ſigned theſe Preſents, and hereunto affixed the common Seal of this Admiralty. Given at *Marſeilles*, the 15th of *May* 1753.

(L. S.) GERIN RICARD.

REMARKS.

CASE XXX.

REMARKS.

N°. H. By the preceeding Atteſtation it appears, that at *Marſeilles* ſpecial good Care is taken, to have Facts well proved, before the Lieutenant of the Admiralty proceeds to a Regulation, and we find in the preſent Caſe a great Deal of good Judgment, but only it ſeems to us, that in the Article of having allowed to the Captain his full Freight, deducting merely 2 *per Cent.* for what was wanting in Proportion of the Voyage, the Owners of the Loading, or their Inſurers, are prejudiced, for although the *French Ordonnances* ſay, *Tit. Freight*, § *XXII. Numb.* 617. " If he cannot find a Ship to carry thither the Goods preſerved, " he ſhall only be paid his Freight in Proportion to what he " has performed of the Voyage." In § *XXI.* it ſays: " He " ſhall be paid Freight for the Goods ſaved, he conducting them " to the Place appointed." And we think the Senſe of this *Ordonnance* can only be, when a Ship is loſt, and that the Cargo ſaved out of her is ſold at the ſame Place, where the Wreck happened, that then Freight ſhall be allowed in Proportion to the Voyage advanced. But it is not at all Places poſſible, or not ſo beneficial, to ſell the Goods, or to end the Voyage juſt where they are ſaved; and when not, the Maſter of the Ship ought to carry them to the Place where he was bound for, and he is to be conſidered for the Freight as a Party concerned in Goods, and for ſo much as the Freight amounts to, he undoubtedly ought to bear an equal Proportion of the Charges of the Salvage with the Owners, as likewiſe his Proportion of what Damage the Goods ſaved had ſuſtained, in the Manner we have ſtated it in the two preceding *Caſes XXVIII. XXIX.* We think, in the preſent Caſe the Account of the Freight ſhould have been regulated as follows:

165 Bundles

CASE XXX.

165 Bundles of Hemp, if all found delivered at *Marſeille* 332394 lb. at Liv. 17:17½ *s.* would have been worth there	*Liv.* 59415: 8:5	The extra Charges for the ſaving whereof amounts to	*Liv.* 6330: 7:7
and would have paid Freight there	12372: 14:9	and extra Damage ſuſtained -	780
	Liv. 71788: 3:2		*Liv.* 7110: 7:7

In Proportion whereto, the aforeſaid Sum of Liv. 12372: 14: 9 will give Liv. 1225: 6; which Liv. 1225: 6, we think, ought to have been deducted from the Freight inſtead of L. 246: 14: 9. For ſuppoſe the whole Cargo of Hemp ſaved, had all been wett, and not produced a Third of the Value of ſound Hemp; and ſuppoſe that the Expences to ſave it, had been four times as much, Is it reaſonable, that the Captain of the Ship ſhould only loſe 2 *per Cent.* of his Freight for the Proportion of the unperformed Voyage? Surely this cannot be the Meaning of the *Ordonnance*; and wherever *Ordonnances* want Explanations, Courts of Judicature ought to make them, and any Regulations under whatever Authority and Pretence of Ordonnances, as well as all Cuſtoms that are againſt natural Equity and Reaſon, ought no where to be valid.

CASE XXXI.

CASE XXXI.

Being an Enquiry, what Premium ought to be paid in the ſeveral Degrees of Age?

BY a Table, of Mr. *Thomas Simpſon*, in his *Treatiſe of Annuities rectified after the Tables from* Halley *and others*, it appears, *pag.* 4 and 5: That out of 1280 newborn Infants, the Number of 410 *Dies* within the firſt Year, and that, of the remaining 870, the Number of 170 *Dies* the ſecond Year, and ſo on, as is below exhibited: According to which the Premium to inſure the Life of a new-born Infant for one Year would

CASE XXXI.

would be $\frac{410 \times 100}{1280}$, or $32\frac{40}{1280}$ *per Cent.* and thus the Premium for a Life of one Year old appears to be $\frac{170 \times 100}{870}$, or $19\frac{470}{870}$ *per Cent.* and so on as in the Table subjoined.

170	out of	870	of	1 Year old, in the second Year		$19\frac{470}{870}$ *per Cent.*
65	-	700	-	2	- - -	$9\frac{200}{700}$
35	-	635	-	3	- - -	$5\frac{325}{635}$
20	-	600	-	4		
16	-	480	-	5		
13	-	564	-	6		
10	-	551	-	7		
9	-	541	-	8		
8	-	532	-	9		
7	-	524	-	10	- - -	$1\frac{176}{524}$
7	-	517	-	11		
6	-	510	-	12		
6	-	504	-	13		
6	-	498	-	14		
6	-	492	-	15		
6	-	486	-	16		
6	-	480	-	17		
6	-	474	-	18		
6	-	468	-	19		
6	-	462	-	20	- - -	$1\frac{158}{462}$
7	-	455	-	21		
7	-	448	-	22		
7	-	441	-	23		
8	-	426	-	25		
8	-	418	-	26		
8	-	410	-	27		
8	-	402	-	28		
9	-	394	-	29		
9	-	385	-	30	- - -	$2\frac{150}{385}$
9	-	376	-	31		

No. A.

CASE XXXI.

9	-	367	-	32		
9	-	358	-	33		
9	-	349	-	34		
9	-	340	-	35		
9	-	331	-	36		
9	-	322	-	37		
9	-	313	-	38		
10	-	340	-	39		
10	-	294	-	40	- - - -	$3\frac{118}{294}$
10	-	284	-	41		
10	-	274	-	42		
9	-	264	-	43		
9	-	255	-	44		
9	-	246	-	45		
9	-	237	-	46		
8	-	228	-	47		
8	-	220	-	48		
8	-	212	-	49		
8	-	204	-	50	- - - -	$3\frac{188}{209}$
8	-	196	-	51		
8	-	188	-	52		
8	-	180	-	53		
7	-	172	-	54		
7	-	165	-	55		
7	-	158	-	56		
7	-	151	-	57		
7	-	144	-	58		
7	-	137	-	59		
7	-	130	-	60	- - - -	$5\frac{50}{130}$
6	-	123	-	61		
6	-	117	-	62		
6	-	111	-	63		
6	-	105	-	64		
6	-	99	-	65		
6	-	93	-	66		

CASE XXXI.

6	-	87 - 67		
6	-	81 - 68		
6	-	75 - 69		
5	-	69 - 70	- - -	$7\frac{17}{29}$
5	-	64 - 71		
5	-	59 - 72		
5	-	54 - 73		
4	-	49 - 74		
4	-	45 - 75		
3	-	41 - 76		
3	-	38 - 77		
3	-	35 - 78		
3	-	32 - 79		

N°. B.

1251

29 remaining of 80 - - - $10\frac{19}{29}$

N°. C. Thus by the above Table it appears, that the Premium of 5 *per Cent. per Annum* for Ages from 15 to 30 Years are much too high, but then to judge of the Risk of Persons Lives, we ought likewise to know, if their Way of Living is regular, or not? (See *Essay* § 30.)

N°. D. But to shew in a farther Light, if insuring at those Premiums on regular People's Lives is profitable, we will suppose, that the Whole of the foregoing Number of Lives of 20 Years old, being 462, were to be insured for 10 Years following at 5 *per Cent.* Premium yearly, how much an Insurance Company could get by it, if £. 100 was fixed on each Life?

Then

CASE XXXI.

Then the Premium to be received would amount				Loss to be paid	
For £. 45500	1st Year a 5 *per cent.*	£. 2275	for £. 700 a 98	£. 686
44800	2d -	2240	700	686
44100	3d -	2205	700	686
43400	4th -	2170	800	784
42600	5th -	2130	800	784
41800	6th - -	2090	800	784
41000	7th -	2050	800	784
40200	8th - -	2010	800	784
39400	9th -	1970	900	882
38500	10th -	1925	900	882
		£. 21065		£. 7742
	is Profit, exclusive of Interest			13323
				£. 21065

CASE XXXII.

CASE XXXII.

Shewing how soon an Estate in Reversion may be greatly incumbered by borrowing Money at Interest beforehand, and paying a Premium of Insurance for Life.

SUPPOSE a Person upon the Expectation of having an Estate of the yearly Income of £. 3000 clear after a certain Person's Death, would set himself down before-hand upon the yearly Expence of £. 1000, borrowing the Money at 5 *per cent.* Interest, and paying 5 *per cent.* Premium for his Life; then he must insure *per* £. 1000 for the first Year.

1138 $\frac{812}{9226}$ a 5 *per cent.* is £. 56 $\frac{8344}{9226}$ and pay
Per 1056 $\frac{8344}{9226}$ a 5 *per cent.* Interest 52 $\frac{7748}{9226}$
£. 109 $\frac{6916}{9226}$.

And in case of Death the Lender receives
Per 1138 $\frac{812}{9226}$ £. Insurance to pay
98 *per cent. per* 1000 £. 980
Deduct $\frac{1}{2}$ *per cent.* 4 $\frac{9}{10}$
£. 975 $\frac{1}{10}$

And so

if for £. 1000 in case of Death is paid 975 $\frac{1}{10}$, then for
1138 $\frac{812}{9226}$ it is 1109 $\frac{6916}{9226}$.

Thus

CASE XXXII.

Thus for received

		Inſurance	Premium	Caſh	Intereſt	
1ſt Year	£. 1000	he pays of 1138 $\frac{8\,12}{9\,2\,2\,6}$	£. 56 : 18	£. 1056 : 18	£. 52 : 17	£. 109 : 15
2d more	1000	2401	120	2229 : 15	111 : 10	231 : 10
3d more	1000	3802 : 15	190 : 3	3531 : 8	176 : 12	366 : 15
4th more	1000	5358 : 3	267 : 18	4975 : 18	248 : 16	516 : 14
5th more	1000	7084 : 5	354 : 4	6578 : 18	328 : 19	687 : 3
6th more	1000	8999 : 16	450	8357 : 17	417 : 18	867 : 18
7th more	1000	11024 : 14	556 : 10	10332 : 5	516 : 12	1073 : 2

98 *per cent.* Spending

88192	Premium and Intereſt.	£. 3848 : 17
99216	in Money - -	7000
49		
19		£. 10848 : 17
1080420	£. 10804 : 4. Difference £. 1 : 7	
$\frac{1}{2}$ *per cent.*	54	Which proceeds from not having calculated quite near to the Fraction.
	£. 10850 : 4	

So that at the End of ſeven Years, for having received only £. 7000, the Eſtate then falling to him, would ſtand indebted for £. 10848 : 17, or £. 10850, and ſo each £. 1000 received before-hand coſts him £. 1570. N°. A.

And now we will ſuppoſe upon having Land-Security to give, he raiſes Money at 3 *per cent.* and propoſes to clear his Eſtate again of the above Sum in ſeven Years; then to know how much he muſt pay off yearly, (by Mr. *Simpſon*'s Solution) N°. B.

put $a = 10850$, the Sum the Eſtate is in Debt.
$n = 7$, the Years in which the Debt is to be paid.
$y = 3$, the Rate *per cent.*
$c = 100$, and $x = 103 = c + y$,

ſo

CASE XXXII.

so shall $\frac{x^n}{x^n + c^n} \times \frac{y^a}{c}$ expres the required Sum.

Thus c^n, or 100 raised to the seventh Power,

being = 10000000000000

and x^n = 12298738654248 7

thence is $\frac{x^n}{x^n - c^n} \times \frac{y^a}{c} = \frac{12298738654248 7}{2298738654248 7} \times \frac{3 \text{ Times } 10850}{100} = 1741 l.$

which is the Sum he must save, and pay off yearly to clear the Estate again in seven Years. The same Thing might have been otherwise determined, and that more expeditiously, by Help of Logarithms: For the general Expression above given being $= \frac{1}{1 - \left|\frac{c}{x}\right|^n} \times \frac{y^a}{c}$ its Logarithm will therefore be = Log. y + Log. a — Log. c — Log. $1 - \left|\frac{c}{x}\right|^n$ = 0, 477121. + 4, 035430 — 2 + 0,728391 = 3,240942; to which the Number corresponding is 1741, the same as before.

CASE

CASE XXXIII.

CASE XXXIII.

IN the State-Lottery of *Amsterdam*, 1712, mentioned (*Essay*, § 28.) the whole Number of Tickets was 30,000, of which 3800 were Prizes: *Law*, in the public Papers proposed, that if any one would give him the Numbers of ten Tickets, and pay to him 100 Gilders, he would insure them that they should not all come out Blanks; or, if they did, to repay the Possessor 300 Gilders for the 100 Gilders received. Whereupon the Question is asked, how much the Chance was in *Law*'s Favour? N°. A.

In order to a general Solution (by Mr. *Thomas Simpson*) put N°. B.

a = the whole Number of Tickets in the Lottery.
b = the Number of Blanks.
n = the Number of Tickets insured.
p = the Premium paid for insuring.
q = the Sum to be paid if they all come out Blanks.

Then the Number of Chances, or Variations for drawing all Blanks being $= \frac{b}{1} \times \frac{a-1}{2} \times \frac{b-2}{3}$, &c. to n Factors, and the whole Number of Chances or Variations is $= \frac{a}{1} \times \frac{a-1}{2} \times \frac{a-2}{3}$ &c. to n Factors, it follows,

that $q \times \frac{b \,.\, \overline{b-1} \,.\, \overline{b-2}, \text{ \&c.}}{a \,.\, \overline{a-1} \,.\, \overline{a-2}, \text{ \&c.}}$ will express the Sum paid, $a \times a$ Medium, in Consideration of the Premium received; so that the Gain by every Insurance, taken one with another, is $= p - q \times \frac{b \,.\, \overline{b-1} \,.\, \overline{b-2} \,.\, \overline{b-3}, \text{ \&c. to } n \text{ Factors}}{a \,.\, \overline{a-1} \,.\, \overline{a-2} \,.\, \overline{a-3}, \text{ \&c. to } n \text{ Factors}}$: Which, as both a and b are supposed to represent large Numbers, will be $= p - q \times \frac{b^n}{a^n}$ very near. Thus, in the Case proposed, a being $= 30000$, $b = 26200$, thence is the Logarithm of $q \times$

CASE XXXIII.

$q \times \frac{b^n}{a^n}$ (= Log. q — $n \times$ Log. $\overline{a - b}$ Log. b) = 2,477121 — $10 \times 0{,}058820 = 1{,}888921$, to which the Number corresponding is 77,42; which subtracted from 100, leaves 22,58 = the Number of Gilders gained by *Law*, upon a Medium, by every Insurance.

If it were to be demanded, how much ought on an Equality of Chance to have been paid by him in Consideration of 100 Gilders Premium, when all the Tickets insured should be drawn Blanks.

Then putting $q \times \frac{b^n}{a^n} = p$ we have $q = p \times \frac{a^n}{b^n}$ expressing the Number required; which in the Case proposed comes out $= 387\frac{1}{2}$; and so many are the Gilders that *Law* might have afforded to pay, when all the ten Tickets proved to be Blanks, without being a Loser by the Bargain.

In the same Manner the Advantage, or Disadvantage in any other Lottery may be determined, from the general Equation above given; but the Equation will be rendered rather more commodious, if $\frac{a}{b}$ be put $= \frac{d+1}{d}$ (that is, if the Proportion of the Blanks to the Prizes be supposed as d to 1.) whereby

$p - q \times \frac{b^n}{a^n}$ becomes $= p - q \times \left|\frac{d}{d+1}\right|^n$ and $p \times \frac{a^n}{b^n} = p \times \left|\frac{d+1}{d}\right|^n$

from the latter following Table is calculated, exhibiting at one View, what Sum ought, upon an Equality of Chance, to be repaid for £. 100 Premium, if any given Number of Tickets (not exceeding ten) should be all drawn Blanks.

N. C.

Number

CASE XXXIII.

Number of TICKETS insured.

Number of Blanks to a Prize.	1	2	3	4	5	6	7	8	9	10
3	133,3	177,8	236,9	315,8	421	561,3	748	997,2	1329	1772
4	125	156,3	195,8	244,1	305,2	382,4	476,9	596,1	745,3	931,4
5	120	144	172,8	207,4	248,9	298,6	358,4	430	516	619,3
6	116,6	136,1	158,8	185,3	216,1	252,1	294,3	343,2	400,5	467,1
7	114,3	130,6	149,3	170,6	195	222,9	254,4	291,1	332,6	380,3
8	112,5	126,5	142,4	160,3	180,3	202,8	228,3	256,6	288,8	324,8
9	111,1	123,5	137,3	152,4	169,4	188,2	209,1	232,4	258,1	286,7
10	110	121	133,1	146,4	161	177,1	194,9	214,4	235,8	259,4
11	109,1	119	129,8	141,6	154,5	168,5	183,9	200,4	218,9	239
12	108,3	117,4	127,1	137,7	149,3	161,6	175,1	189,8	205,5	222,6
13	107,7	116	124,8	134,5	144,9	156	168	180,9	194,9	209,9
14	107,1	114,7	122,9	131,6	141	151,1	161,9	173,4	185,6	198,9
15	106,6	113,9	121,4	129,5	138	147,2	157,1	167,6	178,7	190,6
16	106,2	112,9	120	127,4	135,4	143,9	152,9	162,4	172,6	183,4

CASE XXXIII. N°. D. For an Inſtance of the Uſe of the above Table, ſuppoſe that a Perſon in the late *London* Lottery of 1753, wherein there were 11 Blanks to a Prize, ſhould offer to pay £. 200 for 100 received, if in the Number of 10 Tickets no one ſhould be drawn a Prize: Then to know his Advantage or Diſadvantage, we are to look for the Number of Tickets at the Head of the Table, and for the Proportion of Blanks to a Prize in the firſt Column to the left Hand; anſwering to which the Number 239 will be found, being the Sum that the Inſurer might afford to pay, when all the Tickets come out Blanks, without being a Loſer: So that by every £. 239 (at a Medium) he gains £. 39 clear. Hence it will be, as 239 : 39, 100 *l.* 16 : 6 = the Gain *per Cent.* upon all the Money he receives.

N°. E. For a ſecond Example, let there be now ſuppoſed a Lottery, wherein there are only 4 Blanks to a Prize, and ſuppoſe the Premium to be £. 60 for inſuring the Number of 6 Tickets, and that the Sum to be paid back, if they are all drawn Blanks, is £. 200. Here the Sum to be paid on an Equality of Chance, in Conſideration of a Premium of £. 100, appears to be £. 382 : 4. But 60 : 200 : : 100 : 333, 3, the Sum actually repaid for £. 100, in caſe no Prize is drawn, this, ſubſtracted from 382, 4 leaves 49, 1 = the Gain on 382, 4; and ſo we have 382, 4 : 49, 1 : : 100 : 12, 8, or £. 12 : 16, the Gain *per Cent.* of the Inſurer in the Caſe laſt propoſed.

CASE

CASE XXXIV.

C A S E XXXIV.

Shewing that Perſons abroad, advancing Money to Maſters of Ships on Bottomry, ought to be convinced of the Neceſſity for ſuch a Loan, and to ſee that the Money be actually employed for the Uſes alledged.

THE *St. George*, a Tranſport in his Majeſty's Service, was in 1742-3, commanded by Capt. *John Rafton*, who dying at *Jamaica*, he was ſucceeded by his Mate *Will. H--bton*, and the Ship loaded with King's Stores at that Iſland, for *London*; but it appears by a Proteſt the Captain made at *Carolina*, that he was forced through Diſtreſs to put in there, to repair his Ship, *&c.* and notwithſtanding he had a Letter of Recommendation from one of his Owners, to Mr. *B. Godin* his Correſpondent there, deſiring him to ſupply the Captain with what he ſhould want, yet not being able immediately to meet with him, the Captain accepted the Tenders of Mr. *William Y---ms*'s Aſſiſtance, who voluntarily offered to advance him what Money he ſhould have Occaſion for, on Bottomry; in Conſequence of which the following Accounts were ſent by Mr. *William Y--ms* from *Carolina*.

Charles-Town, the 25th of *April*, 1743. N°. A.

Account of ſundry Diſburſements ſupplied Capt. H——bton, *for the Uſe of the Ship St.* George.

To 100 Weight of Candles, at	5*s.*	£. 25	
30 Weight of Tallow	4	6	
8 Barrels of Beef	£. 7	56	
890 lb. Bread	4 *per* 100	35 : 12	
90 lb. Gunpowder	35 *per* ditto	31	
Caſh paid him	-	55	
			£. 209 : 2

CASE XXXIV.

To Captain *Brown* for a Boat		£. 58	: 16
Captain *Paterſon* by Order	-	73	
Captain *Anderſon* by Order	-	106	
Your Note to *Douglas* and *M'Intoſh*		50	
To *Rice Price*, by your Order	-	57	
Caſh paid *George Cleveland*, Chief Mate	-	140	
		——— £. 484	: 16

To Caſh paid *Richard Thied*, Steward, *per* Order		£. 30	
ditto *Michael Roche*, Sailor		64 :	5 : 10
ditto *Peter Ville Pontaux*, Fire-Wood		8 :	15
ditto Yourſelf	-	30	
ditto ditto	- -	50	
ditto ditto	-	20	
		——— 203 :	: 10
To ditto ditto	-	50	
To ditto *John Scott*, by Order		9	
ditto *Richard Herbert*, by Order		23 :	10
ditto Marſhal's Fees, and Buoy Money		4 :	15
ditto Yourſelf	-	50	
ditto *Thomas Douty*, *per* your Order	-	7 :	7 : 6
		——— 144 :	12 : 6

To *Mary Watſon*, for Negro Hire		89 :	10
To Negro Hire 120 Days (4 Negroes)		60	
To 51 lb. Loaf Sugar at 5*s*. 6*d*. paid		13 :	18
To 111 ½ Gallons of Rum 15*s*. paid		83 :	12 : 6
To 1 Barrel of Rice 536 lb. 35*s*.		9 :	7 : 7
To Caſh yourſelf	-	40	
		——— 296 :	8 : 1
To 80 lb. Tobacco 2*s*. 6*d*.		10	
To *William Randall*, for Smith's Work		44 :	10
To *John Daniel*, Ship Carpenter		1370	
To *Richard Mortimore* for Water		12	

To

CASE XXXIV.

To *William Glen*, by Order	£.26	
To *Rice Price*, by Order -	225	
William Street, by Order	193 : 14 : 4	
		£.1881 : 4 : 4
Peter Bonnoist, Cooper, by Order	75	
Joseph Shute, Stowage	89	
James Thomson, Meat	265	
Joseph Wrag -	14	
Alexander Petrie, Cask	97	
Jemmit Cobley, Bread	38 : 2 : 5	
		578 : 2 : 5
John Stone, Blockmaker	20	
George Avery, Sail-maker	102 : 5	
Capt. *Hammond*, by Order	41	
Al. Crofts, Notary	13 : 10	
Pilotage -	30	
Jos. Poinsett -	43 : 1 : 6	
		249 : 16 : 6
To 16½ Gallons of Rum -	18 : 11 : 3	
1 Barrel of Sugar, 280 lb. at 10 *l.* *per* 100 -	28	
Charges on *Street*'s Arrest	40	
Cash 32 Dol. ⅝ at 32 *s.* 6 *d.*	52	
Capt. *Robert Auston* by Order	42 : 15 : 7½	
		181 : 6 : 10½
2 Bushels Salt -	2	
Rice Price, by Order	5 : 15	
Albert Crofts, Notary Public	6 : 10	
Capt. *Robert Auston*, for a Saw	5	
Cash paid him -	11 : 10	
Rice Price, allowed for Butter	9	
		39 : 15
		4268 : 4 : 6½
My (Mr. *Y--ms*) Commission at 5 *per Cent.*		213 : 8 : 5½
		£.4481 : 13

Second

CASE XXXIV. N°. B.

Second,

Charles-Town, the 10th of *May*, 1743.

Account of ſundry Diſburſements for the St. George, *after ſhe was ſtruck with Lightening.*

To Caſh paid the Captain	£. 30		
Joſeph Shute, by Order	11 : 15		
49 Gallons Rum, at 15*s.*	36 : 15		
Your Order for taking 3 Men	50		
Mr. *Freeman*, for arreſting dittos	30		
Diet paid in the Work-houſe	20		
		£. 178 : 10	
Charges paid for ditto Men	5		
Andrew Quetch, for a new Maſt	66 : 14		
John Daniel, for Carpenter's Work -	93 : 16 : 8		
John Randal, for Smith's Work	5		
John Stone, for Blocks	5		
James Thomſon, for Meat	12		
		187 : 10 : 3	
Joel Poinſett's Account	61 : 5		
Benne, the Cooper	2 : 10		
Diet of 3 Men in the Workhouſe	3 : 10		
		67 : 5	
Caſh paid by your Order	20		
Smith, for Proviſions	27		
2 Barrels Beef -	14		
Albert Croſts, Notary	6		
		67	
		500 : 5 : 3	
Deduct *per Poinſett*'s Account	33 : 1 : 6		
Silver -	3		
Thomas Alman	107		
		143 : 1 : 6	
		357 : 3 : 9	

To

CASE XXXIV. N. C.

To Caſh, for a Barrel Pork -	£. 12	
To Caſh, paid for petty Debts -	30	
To 16 Ounces of Silver - -	30	
	£. 429 : 3 : 9	
Commiſſion 5 *per Cent.* -	21 : 12 : 9	
	£. 451 : 16 : 6	

For which two Accounts Mr. *Will. Y--ms* made Capt. *Will. H--bn* ſign (at 500 £. *Carolina* Currency, for 100 £. *Sterl.*) two Bottomry Bonds of £. 896 : 6 : 7, dated the 25 *April*, 1743,
90 : 17 : 5, the 10 *May* 1743,
in the following Manner [*a*] :

South Carolina,

TO all People to whom theſe Preſents ſhall come, *Will. H--bn*, Maſter of the Ship called *St. George*, belonging to *London* in old *England*, now riding at Anchor in the Harbour of *Charles Town*, and bound to the aforeſaid Port of *London*, in old *England*, ſend Greeting.

Whereas I the ſaid *Will. H--bn* being under unavoidable Neceſſity obliged to take up, upon the Adventure of the ſaid Ship, the Sum of Eight hundred ninety-ſix *Pounds*, ſix *Shillings*, and ſeven *Pence Sterling*, for ſetting forth the ſaid Ship to Sea, for furniſhing her with Proviſions, Part of Men's Wages, *&c.* for the ſaid Voyage, which Mr. *Will. Y--ms* of *Charles Town*, Merchant, hath on my Requeſt, in Behalf of the Owners of the ſaid Ship, lent unto me, and ſupplied me with during the ſaid Voyage.

Now know Ye, that I the ſaid *Will. H--bn* do by theſe Preſents, for me, my Executors and Adminiſtrators, covenant and

[*a*] Several Particulars of theſe two Accounts are ſomething erroneous in the Originals, as the Reader may ſee; and we have left them ſo, not to make a Confuſion by altering the Whole.

- grant

CASE XXXIV. grant to and with the said *Will. Y--ms*, that the said Ship shall with the first fair Wind, after the 26th Day of *April*, depart from the said Harbour of *Charles Town*, and shall, as Wind and Weather shall serve, proceed in her Voyage to the aforesaid Port of *London* in old *England:* And I the said *Will. H--bn*, in Consideration of the said Sum of £. 896 : 6 : 7 *Sterl.* Money of *Great Britain*, or Value thereof to me in Hand paid by the said *Will. Y--ms*, at and before the Sealing and Delivery of these Presents, do in Behalf of the Owners of the said Ship, bind myself, my Heirs, Executors and Administrators, and particularly the said Ship *St. George*, with the Freight, Tackle, Guns and Appurtenances of said Ship, unto the said *Will. Y--ms*, his Executors, Administrators, or Assigns, for the Sum of £. 896 : 6 : 7 Money of *Great Britain* as aforesaid, at her safe Arrival in any Port of *England*, from the said intended Voyage. And I the said *Will. H--bn*, do also for me, my Executors and Administrators, covenant to and with the said *Will. Y--ms*, his Executors and Administrators, or Assigns, by these Presents, that I the said *Will. H--bn*, at the Time of Sealing and Delivery of these Presents, am true and lawful Master of the said Ship, as aforesaid; And the said Ship and Freight shall at all Times, after the said Voyage, be liable and chargeable for the Payment of the said Sum of £. 896 : 6 : 7 *Sterl.* Money aforesaid, according to the true Intent and Meaning of these Presents; And that then, and from thenceforth, every Act, Matter and Thing herein contained, on the Part and Behalf of the said *Will. H--bn* shall be void, any Thing herein contained to the contrary notwithstanding. In Witness whereof, I have hereunto set my Hand and Seal this 25th of *April*, 1743, and in the 16th Year of his Majesty's Reign, *&c.*

Witnesses
J. A.
N. S.
W. T.

W. H--bn. (L.S.)

N°. D. And whereas in the above Accounts several Articles appeared, for which no Vouchers were sent by the said *Will. Y--ms*, nor declared by the Captain *Will. H--bn*, how they were

CASE XXXIV.

were laid out; Meſſ. *R. R.* and *N. M.* at *London*, appointed by the Owners to receive and pay, what was due for the ſaid Ship *St. George*, oppoſed the Payment of the above two Bottomry Bonds, whereupon an Action was brought againſt the Ship in *Doctors Commons*, for and in Behalf of Mr. *Will. Y--ms*, and by an Extract from the Regiſtry of the High Court of Admiralty of *England* it appears, that *Thurſday* the 26 of *October* 1743, before the Worſhipful *William Strahan*, Doctor of Laws, Surrogate of the Right Worſhipful Sr. *Henry Penrice*, Knight, alſo Doctor of Laws, Lieutenant of the High Court of Admiralty of *England*, and in the ſame Court, Official Principal, and Commiſſary General, and Special, and Preſident, and Judge thereof, lawfully conſtituted and appointed in the Chamber of the ſaid Surrogate at *Doctors Commons*, *London*, in Preſence of *John Bottrell*, Notary Publick.

N°. E.

Will. Y--ms of *Charles Town* in the Province of *South Carolina* in *America*, Merchant, againſt the Ship called the *St. George*, (whereof *W. H.* now is or lately was Maſter) and her Tackle and Furniture, and alſo againſt whatſoever Freight is due for Tranſportation, or Importation of certain Wares and Merchandiſe in the ſaid Ship, from the Province of *South Carolina* in *America* to the Port of *London*; and alſo againſt all Perſons in general, who have, or pretend to have, any Right, Title, or Intereſt therein.

Sayer.

Which Day *Cheſlyn* exhibited his Proxy for *John Thornton* Eſq; and Company, Owners of the ſaid Ship, called the *St. George*, (whereof *W. H.* now is, or lately was Maſter) and her Tackel, Apparel and Furniture, and alſo her Freight, whatſoever due, for the Tranſportation, and Importation of certain Goods, Wares and Merchandiſe in the ſaid Ship, from the Province of *South Carolina* in *America*, to the Port of *London*, remaining in the Hands of *John Owen* and Company. *James Crockatt*, *Rodrigo Patcheco*, and made himſelf Party for

Cheſlyn.

them, and produced for Surities, *Nicholas Magens* of *Savage* N°. F.

CASE XXXIV.

vage Gardens, and *Libert Dorrien* of *Fenchurch-Street*, *London*, Merchants, who submitting themselves to the Jurisdiction of this Court, bound themselves, their Heirs, Executors, and Administrators, for *John Thornton* Esq; and Company in the Sum of £. 1050, lawful Money of *Great Britain*, unto *Will. Y--ms* of *Charles Town* in the Province of *South Carolina* in *America*, Merchant, to answer the Action commenced in this Behalf, and to bring forth the said *John Thornton* Esq; and Company into Judgment, and to pay what shall be adjudged with Expences, and unless they shall so do, they do hereby severally consent, that Execution shall issue forth against them, their Heirs, Executors, and Administrators; Goods and Chattels, wheresoever the same shall be found, to the Value of the Sum abovementioned; which Caution the Surrogate received, upon the Report of *Thomas Stone*, Deputy Marshal of this Court of Sufficiency of the said Sureties, and Decreed the said Ship, and her Tackle, Apparel and Furniture, and also all and singular the said Freight to be released from the Arrest made in his Behalf.

Examined

SAMUEL HILL,
Register.

N°. G. After which Release, Mr. *R. R.* and *N. M.* who willingly would have Justice done to all the Concerned in the Ship, made more than once a Proposal to Mr. *Y--ms* Agent to leave all Differences to Arbitration, or if he would abate from the Bottomry Bonds so much as could be proved not to have been laid out upon the Ship, and seek his Redress from the Master, they would pay him the Capital, and what Interest had been made with it, employed in *East-India* Bonds, ever since it came into *N. M--s* Possession, and in order to come at a Certainty, what Part of the Money received by the Master, was not expended on the Ship, or what the Master remained
N°. H. in Debt to her Owners, two experienced Captains, and Men of Honour were appointed to be Arbitrators, the one for, or in Behalf of the Master, and the other for, and in Behalf of the Owners, to examine all Accounts delivered by the Master, who decided,

decided, that of the above Accounts £. 4986 : 10 : 6 paid by Mr. *Will. Y--ms*, the Sum of £. 768 : 14 : 2 was for the private Uſe of the Maſter, and nothing relative to the Ship, which at 500 *per Cent.* makes £. 134 : 8 *Sterl.* and this deducted from the Amount of the Bonds, that are together £. 987 : 4 would leave but £. 852 : 16, for which Mr. *Y--ms*'s Agent had refuſed to accept a Tender made him of £. 887 : 4 : 1. However as the Ship's Owners were deſirous to have the Affair ſettled, and made an End of, and as *N. M.* had gained by the Detention of the Money an Intereſt on the *Eaſt-India* Bonds to the Amount of £. 71 : 4, he reſolved to add the Half thereof £. 35 : 12 to his former Tender of £. 887 : 4 : 1, and ſo paid into Court the Sum of £. 922 : 16 : 1, whereupon the following Concluſion reſulted: CASE XXXIV. N°. I.

High Court of Admiralty *Y--ms* againſt the *St. George*.

Creſpigni. *Cheslyn.*

Wedneſday the 29 Day of *July* 1747, before the Worſhipful *Robert Chapman*, Doctor of Laws, a Surrogate in his Chambers, preſent *George Bellas*, Not. Publ. Deputy Regiſter. N°. K.

Which Day *Cheslyn* tendered and left in the Regiſtry of this Court the Sum of £. 922 : 16 : 1 in full Payment and Satisfaction of the Bills of Bottomry, libelled for in this Behalf, and declared, that ſuch his Tender ſo made as aforeſaid to his the ſaid *Creſpigni*'s Client he ſo made without any Coſts, or Expences whatever, and prayed that the ſaid Surrogate would pleaſe to aſſign *Creſpigni* to declare, whether he accepted ſuch Tender in full Satisfaction of the Demand of his Client, made and libelled for in this Suit, to which the ſaid *Criſpigni* immediately conſented, and accepted the ſaid Tender without Coſts, in full Satisfaction and Payment of his Client *Will. Y--ms*'s Demand, and prayed, and at his Petition the ſaid Surrogate decreed the ſaid Sum of £. 922 : 16 : 1 to be paid from and out of the Regiſtry of this Court to him the ſaid *Will. Y--ms*, or his lawful Attorney or Proctor, giving the uſual Security, and at the Petition of *Chelsyn*, by his interlocutory Decree, diſmiſſed his Clients from this Suit, and releaſed and diſcharged the Bail, N°. L.

CASE XXXIV. entered into on this Behalf, and decreed the ſeveral Bottomry Bills annexed to the Libel, and pleaded therein to be delivered to the ſaid *Cheslyn*, or his Clients, being firſt regiſtered.

Examined.

N°. M. It is to be obſerved, that when the Ship *St. George* arrived at *London* from *Carolina*, (the laſt Place ſhe left) ſhe was indebted, beſides the above Bottomry Bills due to Mr. *Will. Y--ms*,

To her former Captain, *John Rafton*, for Ballance from *Jamaica*		£. 566 : 12 : 4
To Mr. *Thomas*, for a Bottomry Bond from *Jamaica*		220
To a Bill of Exchange drawn from *Jamica* by *Will. H--bn*		200 : 5
To Stores, due to the Victualling Office	£. 229 : 10 : 6	
To Men's Wages due	409 : : 7	
To *London* Port Charges, &c.	156 : 7 : 2	
To a general Average For the Ship 1000 £. For Freight 640	165 : 3	960 : 1 : 3
		£. 1946 : 18 : 7

And although it was known, that there was due to the Ship, from the Navy Office, a conſiderable Sum for the King's Service, yet it could not well be calculated, how it would turn out upon the Whole, till the Account with the Navy Office was ſettled; and if the Ship had not been drawn out of the *Commons* by *N. M.* giving Security, every Thing muſt needs have been ſettled there, which would have occaſioned a great Loſs of Time, and Expence, and perhaps more than one Suit to determine who were the Creditors, and in what Order they ſhould be paid? For from the Value of the Ship, which ſold for

N°. N.

£. 825

And the Freight from *Carolina*, amounting in the Whole to . . . 930 : 6

Freight

CASE XXXIV.

Brought over	£. 1755 : 6	
Freight for the King's Stores, due from the Victualling Office .	165	
	£. 1920 : 6	

N°. O.

Undoubtedly there muſt firſt have been ſatisfied the abovementioned four *Items*, amounting to . £. 960 : 1 : 3
And farther, all the Charges in the *Commons*, ſuppoſed to be . . . 200

1160 : 1 : 3

There could not have remained to ſatisfy Mr. *Y--ms*'s 988 £. more than . £. 760 : 4 : 9

Becauſe what was due by the Navy to the Ship before ſhe came to *Carolina* could not have been deemed anſwerable to Mr. *Will. Y--ms*, as *H--bn* could only pledge him, what was in his Poſſeſſion, and the Heirs of *Rafton*, the former Maſter, (who had been the Contractor with the Navy) muſt naturally have been firſt paid out of what was due whilſt he lived, and upon which he had advanced £. 566 : 12 : 4, *&c.*

N°. P.

Moreover, the following Particulars muſt have been cleared up to the Court, againſt the Bottomry Bonds of Mr. *Y--ms*:

Firſt, That it was an abſolute Neceſſity which drove *H--bn* into *Charles Town* Harbour, and that, to proſecute his Voyage, the laying out the Sums of Money, comprehended in *Y--ms*'s Account, was unavoidable; and beſides, to have acted conformable to Marine Laws and Cuſtoms, a proper Survey by intelligent Perſons, appointed by public Authority, ſhould have preceeded, to judge in what his Wants really conſiſted.

Secondly, Proofs that all ſuch Sums were actually expended on the Ship, and Proviſions, for compleating her Voyage.

Thirdly,

CASE XXXIV.

Thirdly, As Mr. *Y--ms* charged the Owners a Commiſſion, it was undoubtedly his Duty to act as moſt for their Advantage, and muſt have proved, that no Body elſe would have given the Money on Bottomry, on cheaper Terms.

Fourthly, And as in the Voyage from *Carolina* to *London*, Part of her Cargo was thrown over-board, for which the Ship and Freight contributed for £. 1640 £. 165 : 3. The Queſtion muſt have been decided, whether any, or what Proportion Mr. *Y--ms* ought to bear, for his £. 988 Adventure therein?

In Conſideration of all which, the Court undoubtedly would have allowed a greater Abatement from Mr. *Y--ms*'s Bonds, than was inſiſted on by the Tender now made by *N. M.* being only £. 100 ſhort of his £. 988,
and 35 : 12 of the Intereſt he had gained,

£. 135 : 12, which makes about the ſame Sum, as had actually appeared to the Arbitrators, not to have been laid out upon, or for the Ship's Benefit, but for the private Uſe of the Captain, whereupon Mr. *Creſpigni*, however litigious his Client was, would not longer oppoſe ſo generous an Offer.

N°. Q. Perſons living in Sea-Ports, may learn from this *Caſe*, not to believe, or truſt too eaſily a Captain they do not know; and when they propoſe benefiting themſelves by lending Money on Bottomry, to ſuch whoſe Diſtreſſes oblige them to ſeek it; the Lenders for their own Satisfaction and Security ought to have Proofs given, that there was a Neceſſity for ſuch an Advance, and that the Money had actually been employed for the Purpoſes alledged. (*See* Eſſay § 24. *pag.* 27.)

CASE

CASE XXXV.

CASE XXXV.

Remarks from Ricard's *Negoce d'*Amſterdam *on Bargains at Option in Goods for Premiums, or Inſurances, to have the Refuſal of Goods at a certain Price.*

THOSE that buy on a certain Bargain, cannot know what Profit or Loſs they are to have on what they have ſo bought untill they reſell; and the Price of Goods may riſe or fall much at the Expiration of Contracts, ſo that they may chance to loſe conſiderably, when at the Time of making the Contract, they expected to have made a great Profit: Prudent People therefore, who do not chuſe to riſk a great Deal on Goods which they think muſt riſe or fall conſiderably, do not care to buy nor ſell on a certain Bargain, but chooſe rather to give an agreed Sum to ſome body who in Conſideration thereof obliges himſelf to deliver or receive the Goods in Queſtion at an appointed Time, and at a limited Price, if they think proper to inſiſt on his delivering or receiving them; on Condition, that if at the appointed Time they do not requeſt the Fullfilling of the Contract, the Sum given will be loſt, and the Contract void. The Sum given is called Premium, and the Liberty that the Giver of the Premium has to have the Contract fullfilled or not, is called Option, and the Contracts are made to the Bearer. Here follows a Copy of the firſt of thoſe Contracts, that happened to fall in our Way:

I the underwritten confeſs to have received of the Bearer the Sum of *One hundred and fifty Guilders* currant Money, againſt which I engage and bind myſelf *to deliver* from henceforth at any Time untill *the Firſt of January, One thouſand, Seven hundred and Fifteen*, that Day incluſive, *Ten thouſand Pounds of good and deliverable Dutch made Starch*, at the Price of *Sixteen Guilders currant Money for every One hundred Pounds*, to be paid in ready Money and as cuſtomary; but if the Bearer of this

CASE XXXV. this does not give me Notice *that I am to deliver him the said Ten Thousand Pounds of Starch*, between this Day *and the First of* January, 1715, that Day inclusive, I shall be free, and discharged of this present Contract, and the Premium will be mine, and I shall never be obliged to restore the same, nor shall ever any Body be entitled to reclaim the same. So done, *bona fide*, *Amsterdam*, the 6th of *January*, 1714.

Signed

G. V. H.

These Contracts may be had ready printed of the Stationers at *Amsterdam*, and the Blanks need only be filled up with the Sum given, the Quality and Quantity of the Goods, the Price and Time of Delivery, as may be perceived by what is printed in a different Character in the foregoing Contract, which is a Contract of Premium for to deliver.

By the Contents of this Contract it appears that *G. V. H.* was bound to deliver to the Bearer of the same, during the whole Year 1715, 10,000 lb. of Starch, at 16 Gilders *per* Quintal, in Consideration of the 150 *Fl.* Premium he received; wherefore whatever the same had got up above 17½ Gilders the Quintal, would have been in our Favour; and if it had got up to 20 *Fl.* we might have sold this Contract for 4 *Fl.* or more Premium *per* Quintal, or we might have insisted on the 10,000 lb. of Starch being delivered to us at 16 *Fl.* But as the Price of Starch that Year fell instead of rising, as we expected, we lost our Premium, and the Contract was void; it being contrary to Reason and common Sense to expect that we should receive Starch at 16 *Fl. per* Quintal, when it could be bought at 12 or 14 *Fl.* But if for Instance Starch had risen to 16½ or 17 *Fl.* we should have demanded the Starch; since, although it would have stood us in 17½ *Fl.* considering the 30 *s. per* Quintal we paid for Premium, we should have regained Part of the Premium by selling the Starch at 16½ or 17 *Fl.* But had we given our Premium to receive instead of delivering, the Contents of the Contract would have been as follows:

I the

CASE XXXV.

I the Underwritten confeſs to have received of the Bearer the Sum of *One hundred and fifty Gilders*, current Money, in Conſideration of which Premium I engage and bind myſelf *to receive* from henceforth at any Time until *the Firſt of* January, *One Thouſand Seven Hundred and Fifteen*, that Day incluſive, *Ten Thouſand Pounds good deliverable* Dutch *made Starch*, at the Price of *Sixteen Gilders current Money for every One Hundred Pounds*, to pay ready Money, and as cuſtomary; but if the Bearer of this does not give me Notice that *I am to receive the ſaid Ten Thouſand Pounds Starch*, between this Day and the Firſt of *January*, 1715, that Day incluſive, I ſhall be free and diſcharged of this Contract, and the Premium will be mine, and I ſhall never be obliged to reſtore the ſame, nor ſhall ever any Body be intitled to reclaim the ſame. So done, *bona fide*, *Amſteraam*, the 6th of *January*, 1714.

G. V. H.

This Contract is intirely the Reverſe of the former, ſince it is the Intereſt of him who gives the Premium for Delivery, that the Goods ſhould riſe, and that the Intereſt of him who gives the Premium for receiving is, that the Goods ſhould fall; and thus had we given the above Premium to receive, whatever the Starch had fallen under $14\frac{1}{2}$ *Fl.* would have been in our Favour; and had it gone to 10 *Fl.* we might have diſpoſed of our Contract with Profit, or obliged *G. V. H.* to receive and pay us the 10,000 *l.* of Starch at 16 *Fl. per* Quintal.

Theſe Contracts are ſold and re-ſold at Pleaſure, without any Indorſement or Guaranty of thoſe who ſell, when they are ſigned by good and known People: But thoſe who give the Premiums before they conclude any Thing, ſhould know the Names of thoſe who ſigned the Contracts, and not too much rely on the Broker's Word, who will often aſſure that the Contractors are very good, but will not name them until the Bargain is ſtruck; though to be ſure in ſuch a Caſe, ſhould the Giver of the Premium not approve of the Contractor, he may very juſtly recant.

CASE XXXV.

The Takers of Premiums very often engage themſelves to much more than they think, for there happen ſuch unforeſeen Accidents in Trade, that the Goods they bound themſelves to deliver or receive, riſe or fall from 25 to 30 *per Cent.* during the Time of their Engagement: Beſides, there are a Thouſand Artifices practiſed in this Way of Traffick, and very often even Rogueries; ſo that if one launches out in it too far, it is almoſt impoſſible not to be ruined. We could write a whole Volume of Practices of this Kind, which we have obſerved for theſe twenty Years paſt; but it being foreign to our Purpoſe or Intention, we rather chuſe to finiſh this Chapter with obſerving, that it is a great deal better to give than to take Premiums, becauſe he that gives the Premium is under no Engagement, and loſes nothing more than his Premium in caſe the Goods do not arrive to the Price he imagined.

On certain Bargains, as well as on Premiums, are negociated:

The *Eaſt-India* Company's Stock of the Chamber of *Amſterdam*.

The *Weſt-India* Company's ditto.

The *Engliſh Eaſt-India* Company's Stock, although it be prohibited at *Amſterdam* to ſell any.

Contracts are likewiſe very frequently negociated there in the ſame Manner for Pepper, Salt-petre, *Levant* Coffee, *India* Coffee, Cocoa, Cochineal, Brandy, both of Wine and of Grain, Corn, Whale-bones, Whale-oil, Starch, Borax, and moſt other Sorts of Goods, when they either begin to grow ſcarce, or that there is great Plenty of them, provided the ſame can be aſcertained at a certain Value or Goodneſs, which in ſuch Caſes ought neceſſarily to be fixed and eſtabliſhed.

CASE

CASE XXXVI.

CASE XXXVI.

Shewing in what Manner a Distribution was made to the Insurers and others, on Goods being the Property of Enemies, taken in a Dutch *Ship, and condemned at* Doctor's-Commons, *and afterwards restored by the Lords of Appeal.*

IN the late War between *England*, *France*, and *Spain*, the first of those Powers, by her Superiority in Naval Strength, soon made herself Mistress of the Sea: The *Dutch* in the Interim not inclining to interfere in the Quarrel, remained a long while neuter; and in the Beginning of the War the *English* kept up to a strict Observation of the Treaties of Commerce made with that Nation in the Years 1667 and 1674; wherein it N°. A. is stipulated that the Subjects of each should be at Liberty to navigate freely to and from any neutral Port or Place whatsoever, to any Port in Enmity with the other; and that such Freedom of Navigation and Commerce should not be infringed on Occasion of any War; nor should one or the other be impeded or molested in conveying any Kind of Merchandizes and Commodities that were carried in Time of Peace; except those only which are expressed in a subsequent Article of the Treaties, and are to be comprehended under the Name of contraband Goods. And it has been often a decided Point in former Wars, N°. B. that by Virtue of these particular Conventions between *England* and *Holland*, the Ships of either Nation should and did give Freedom of Conveyance to Enemies Property (Warlike Stores only excepted) but on the other Hand, that whatever Property of either of these Powers should be met with on board an Enemy's Ship, was to be deemed lawful Prize and confiscated. N°. C. This is somewhat different from the general Laws of Nations, as well as from other particular Treaties of Commerce concluded by *England* with *Denmark* and *Sweden*, *&c.* whose Ships in Time of War are only permitted to navigate free with neutral Property.

CASE XXXVI. N°. D.

In full Reliance on the before-mentioned Treaties, *H. M.* a Merchant at *Hamburgh*, having a great Quantity of Merchandizes to ſhip for Account of his Friends in *Spain*, in the Year 1747 made Choice of, and chartered a *Dutch* Ship called the *Juffrow Elizabeth and Suſanna*, Capt. *Tjert Bouwes*, to load for *Alicant*, *Carthagena*, and *Barcelona*; with this ſpecial Condition, that no contraband Goods ſhould be admitted on board her.

And he himſelf ſhipt on her, for Account of Merchants reſiding in *Spain*, ſundry Merchandizes, not contraband, amounting, with the Premium of Inſurance, to the Sum of

Banco Mks. 190,076 : 6

S. T. and Sons ſhipt for Account of Merchants in *Spain* - - 6,975

Several other Merchants at *Hamburgh* ſhipt for their own, and other neutral People's Account - 44,070

N°. E.

This Ship was met in the Channel by two *Briſtol* Privateers called the *Tyger* and *Tygreſs*, who carried her to *Briſtol:* And notwithſtanding her being a *Dutch* Ship, the Captors by their Agent ſued for a Condemnation in *London* at *Doctor's-Commons*, whereby all the Goods not proved to be neutral Property might be condemned as good Prize.

The Judge of the Admiralty, who in the Beginning of this War had (conformable to the Treaties of Commerce ſubſiſting between *England* and *Holland*) never inſiſted upon any other Proof with Reſpect to Ships ſailing under *Dutch* Colours, than that the Ship was *Dutch* Property, and no contraband Goods amongſt her Cargo, now altered his Method of Proceeding in regard to this and ſome other *Dutch* Ships that were likewiſe taken; and ordered that Proofs of the Property of all the Goods ſhould be brought into Court; and in conſequence thereof it appearing that Certificates were ſent for only the Goods which amounted as above to *Mks.* 44,070, proving them to be for Account of neutral People, he releaſed the Ship, and thoſe particular Goods only, and condemned all the reſt as lawful Prize, in Favour of the Captors, in direct Oppoſition to the Treaties

Treaties of Commerce then and ſtill ſubſiſting between *England* and *Holland*. CASE XXXVI.

H. M. the Freighter of the Ship, and Shipper of much the greateſt Part of the Cargo for the Account of his Friends in *Spain*, prudently conſidering that after a War had been protracted any Length of Time, it was ſeldom that a ſtrict Regard was paid to Treaties, and being unwilling at all Events to run any Riſks, he ordered the following Inſurances to be made on the Goods he had ſhipt, *viz.*

Mks. 107562 : 10 at *Amſterdam*
64318 : 12 at *London*
11980 : 12 at *Leghorn*
} from all Riſks of the Sea, Reſtraint and Detentions of Princes, *&c.*

And as *N. M.* at *London* had made Inſurances for him there to the Amount of £. 3250 and £. 470 Sterling, he was deſired on the Condemnation's being declared, immediately to recover the Payment of the Sums inſured: And as ſoon as the Value of the Inſurance was proved to have been on board, the *London* Inſurers, with their uſual Punctuality, paid in full; and induced by their Example, the Inſurers at *Amſterdam* and *Leghorn* did the like. N°. F.

Thus this Affair was no longer the Concern of the Shipper at *Hamburgh*, nor of his Friends in *Spain*, but of the Inſurers: And although far the greateſt Sum was inſured at *Amſterdam*, the Inſurers there gave themſelves not the leaſt Trouble about it: And indeed a great many People in *England* were apprehenſive that the unavoidable Charges attending an Appeal would be but throwing certain Money after uncertain: And actually for Want of appealing, no Satisfaction at all has ever been obtained for a great many Goods taken in *Dutch* Ships, and were condemned for no other Reaſon. However, *N. M.* and ſome others did not think proper to give up their Inſurers Cauſe ſo eaſily: And as it appeared clearly by the Ship's Papers delivered into *Doctor's-Commons*: *Firſt*, That the *Elizabeth* and *Suſanna* was intirely *Dutch* Property. *Secondly*, That her Paſſports were conformable to what had been preſcribed by Treaties: And *Thirdly*, That nothing of contraband was amongſt her Cargo. They judged that the different Procedure in the Court of Admiralty from N°. G.

CASE XXXVI. from what it ſet out on at firſt, might be occaſioned only with a View of putting a Stop thereby to the Trade carried on by the *Dutch* with the Enemies; which might bring them the ſooner to give the Aſſiſtance to the *Engliſh*, which by other Treaties they had obliged themſelves to do, in caſe of a War: And that therefore on appealing properly, it was natural to believe that Satisfaction would afterwards be made by the Lords of Appeal, for what Damages had been ſuſtained by ſuch Captures.

N°. H. But as no Appeal can be made except in the Captain's Name, and Security muſt be given on his Part, to make good all the Charges, *&c.* if the Sentence at *Doctor's-Commons* ſhould be confirmed: Beſides, it was indiſpenſibly neceſſary that the Ship and her whole Cargo ſhould remain together untouched, till the Cauſe came to be decided by the Lords of Appeal: And it happening likewiſe at a Time when a Multiplicity of Cauſes were prior to this, and muſt be heard firſt in Courſe: Theſe were Difficulties which in this, as well as in ſome other Caſes of the like Nature, were not eaſily to be ſurmounted; for the Captain of the Ship (who was releaſed) was dubious who ſhould pay him for the Detention in caſe the Sentence ſhould be confirmed; alledging that perhaps the Ship might lay and rot by the length of Time. The Owners of the Goods which were releaſed likewiſe oppoſed his making any longer Stay, when once their Goods, together with the Ship, had been legally diſcharged. But notwithſtanding, upon *N. M*'s proteſting againſt the Captain, and declaring that in caſe he departed without appealing, he would be ſued on his Arrival in *Spain* for not having done his Duty, and uſed his Endeavours to recover his Cargo, he conſented to appeal. And when he had ſo done, on *N. M*'s repreſenting to the Agents for the Privateers that in caſe the Sentence obtained at *Doctor's-Commons* ſhould be reverſed, they would not only be obliged to make good all the Charges, but alſo whatever Damages had already, or might by the Delay further reſult to the Ship and Cargo; they became inclinable to liſten to Terms. Whereupon *N. M.* with the Approbation and Conſent of his Inſurers at *London*, and *H.* and *P. M.* for the Owners of the Ship, as likewiſe jointly with *N. M.* for the Inſurers at *Amſterdam*, agreed with the Agents for the Privateers, as follows:

Firſt,

CASE XXXVI.

Firſt, That the Agents for the Privateers ſhould, with our Intervention, make a public Sale of all the Goods condemned.

Secondly, That the neat Proceeds (deducting the Duties, Charges of landing, and a Commiſſion of 5 *per cent.* on the Sales) ſhould be inveſted in *India* Bonds and depoſited in the Bank, under our joint Seals and Diſpoſal.

Thirdly, That when the Cauſe ſhould be decided, the Party which obtained a Sentence in its Favour, ſhould take the *India* Bonds, with all Intereſt that might be due thereon; each Side bearing its own Charges of the Law.

By this Convention, as our Council in Behalf of the Cargo argued before the Lords of Appeal, we had been more favourable to the Captors, than they were of Opinion we ſhould have been: But as Merchants we knew how to perceive our Intereſt, and conſidered that in this Manner

Firſt, We freed the Ship and Goods releaſed, from any further Expences and Damages.

Secondly, That when any Cauſe of the ſame Nature for other People came firſt to be decided, we might be certain of the Deſtiny of ours, and therefore if loſt ſhould be at little or no further Expences. And

Thirdly, That it would not be difficult to find out ſome plauſible Reaſon or Excuſe to juſtify the Capture and Seizure, though the Goods ſhould be diſcharged; ſo that we had little or no Hopes for Recovery of Coſts.

And even if the adverſe Party ſhould be adjudged to make good the Damages on the Goods, we might poſſibly be engaged in a long Contention about the *Quantum*; and that after all, their Securities might be found deficient, as in Effect did afterwards happen to ſome others, who had a little too tenaciouſly adhered to the Letter of the Law. But now our Ship *Elizabeth* and *Suſanna*, on the above Agreement being made with the Agents of

CASE XXXVI. of the Privateers, purſued her Voyage with the releaſed Goods to *Spain*; where the Captain, as long as he was uncertain if ever he ſhould recover any Thing from the Captors, inſted that thoſe Goods alone which were diſcharged as aforeſaid, together with the Ship, ſhould contribute according to their reſpective Values, and thereby make good all the Charges he had been at in *London*. According whereto *J. W. S.* the Regulator of Averages at *Hamburgh*, made the following Adjuſtment.

N°. K. *Account of the General Average upon the Capital given free, according to the Account of Meſſrs.* M. *and* A. *at* London, *dated the 19th of* Auguſt, 1748, viz.

To *Henry Farrant*, Proctor in *Doctor's-Commons*, for Law Charges, occaſioned by reclaiming the Ship and Cargo, as *per* Account, Let. E.	£. 97 :	6
To Poſtage from and to *Hamburgh* and *Briſtol*, with Affidavits, and Brokerage of Drafts	2 :	4
To their Trouble and Attendance in *Doctor's-Commons* for the Goods given free.	40	
To a Copy of a Proteſt againſt the Privateer -	10 :	6
	£. 140 :	: 6

a 34 *s.* 9 *d.* - *Banco Mks.* 1824 : 11

Out of the Account, Let. F. *of the Concerned in the Ship, being* £. 1632 : : 6, *the following Articles are to be made good, inſtead of* £. 1445 *Demorage for the Ship,* 289 *Days a* £. 5.

Accord-

Brought over *B°. Mks.* 1824 : 11 — CASE XXXVI.

According to a Note *L. G.* monthly Wages amount to : — N°. L.

Pr. the Captain *Fl.*	55	*According to a Declaration* L. A. *the Ship was taken the 1ſt* Nov. *N. S. and the Goods have been unloaded the 3d* May *agreeable to a Letter* L. H. *and the* $\frac{6}{17}$ Aug. *when the Ship was ready to ſail, are* $9\frac{1}{2}$ *Months.*
- the firſt Mate	36	
- the ſecond Mate	24	
- the Carpenter	36	
- the Boatſwain	24	
- the Cook -	24	
- the Sailmaker	18	
- the under Carpenter -	8	
- ſeven Sailors, a *Fl.* 16 -	112	
- three Boys -	22	

at *Fl.* 359 *per* Month amounts to *Fl.* 3410 : 10, a 105 *per Cent.* 3897 : 12

Board-wages for 17 Sailors, 289 Days, a 10 *d.* . . *ſ.* 204 : 14 : 2

Ditto . . for the Captain a 3 *s.* 6 *d.* . . 50 : 11 : 6

Fire Money . . 31 : 5 : 8

To divers Proteſts againſt the bringing up and unloading the Goods . . 3 : 6 : 10

To Pilotage from *Ilfracombe* up the River, and afterwards with 6 Boats and 40 Men to her anchoring-Place . . . 10 : 10

To 144 Tuns Ballaſt, inſtead of the Goods that were unloaded . . 7 : 4

CASE XXXVI.

Brought over *B°. Mks.* 5722 : 7

To Pilotage out of the Road with 6 Boats and 40 Men to *Coombe* . . 3 : 9

To the Broker and Inſpector . . . 10 : 10

To Port-charges . . 2 : 10

To Commiſſion of the Correſpondents at *London* and *Briſtol* . . 40

£. 370 : 1 : 2

a 34 *s.* 9 *d.* . . . 4822 : 9

To Intereſt of the Demorage of the Ship, as alſo for the Wear and Tear of the ſame and of the Materials, nothing has been allowed.

To Diſburſe of Money, is allowed for Intereſt 500

To the Gentlemen Deputies at Hamburg *of the Goods given free:*

Pr. to the Notary *W.* as *per* Account of *K.* *Mks.* 25 : 8

- to the Broker *G. L.* . 28 : 8
- to procure a Payment of 12 *per Cent.* . . 8 : 3
- to Poſtage of Letters . 27 : 7

Mks. 89 : 10

a 116 *per Cent.* . . . 77 : 9

Com-

CASE XXXVI.

Brought over	*B°. Mks.* 11122 :	9
Commiſſion to the Deputies at *Hamburgh* .	300	
For my Commiſſion of this Average, charge only	58	
To the Clerk	6	
To the Poor, for the Settling of it . .	4 :	11
B°. Mks. 11491 :	4	

Theſe *Mks.* 11491 : 4 being proportioned on the Capital of *Mks.* 58000, is upon each *Mk.* 100 *Mks.* 19 : 13, which is to be paid by the following : N°. M.

Meſſ. *H. v. S.* and *S.* for *Mks.*	3850 -	*Mks.* 762 :	12½
Mr. *S. D. M.*	2000 -	396 :	4
Mr. *G. A.*	5770 -	1143 :	3
Meſſ. *P. V.* and *S.* . .	2050 -	406 :	2½
Mr. *B. G.*	2450 -	485 :	6½
Meſſ. *S. T.* and *S.* . .	1200 -	237 :	12
Mr. *J. C. C.*	26750 -	5299 :	13½
The Ship *Lady Eliſabeth and Suſannah* . . .	13700 -	2714 :	5
The Freight	230 -	45 :	9
Mks.	58000 -	*Mks.* 11491 :	4

Hamburgh,
the 7 *July* 1750.

J. W. S.

CASE XXXVI. N°. N. But then the Deputies for theſe releaſed Goods inſinuated by ſeveral Letters from *Hamburgh* to us, who had the Care of the Appeal, that, in Caſe we ſhould obtain a Reſtitution of the Goods condemned, we ought to contribute proportionably to the above General Average; but when in Anſwer we deſired to know, if they would bear a Part of the Charges which the Appeal might create, we never could obtain any Explanation from them to that Point.

N°. O. Here at *London* we contented ourſelves with our Inſurers having given it under their Hand, to make good what Charges we ſhould be at, but we requeſted from the Inſurers in *Amſterdam*, that they would remit us 4 *per Cent.* on Account of the Charges we muſt neceſſarily be at, in the Purſuit of our Appeal, before we ſhould be able to bring the Cauſe to a Hearing, and we had a good Deal to do to convince the *Amſterdam* Inſurers of the Goodneſs of their Cauſe, before they would agree to any Advance of Money; and from the *Leghorn* Inſurers, we obtained no Anſwer at all upon this juſt Requeſt. The like Difficulties have been the Cauſe, that many of the Ships ſtopped in *England*, were not ſooner releaſed; and made the Charges run higher than otherwiſe they would have done. When we had received from *Amſterdam* a Remittance of £. 450 on Account of the Charges already commenced, and to be further incurred, we ſoon found Means to bring our Affair to a Hearing, before the Lords of Appeal, and obtained a Sentence that all the Goods ſhould be reſtored, and each Party bear its own Charges. Whereupon we received out of the Bank

	£.
The Capital depoſited in *India* Bonds to the Amount of	10400
The Intereſt on the ſame . .	920 : 19 : 6
Per Ballance for the Privateers from *H. Z.*	14 : : 4
	£. 11334 : 19 : 10

And

CASE XXXVI. N°. P.

And then the Queſtion was, *How to diſtribute the ſame?* For

Firſt, The Owners of the Ship demanded to have made good to them, all the Remainder of the Ship's Demorage that not had been allowed to them at *Hamburgh*, together with what Freight they loſt.

Secondly, The Owners of the before releaſed Goods inſiſted upon having made good, Part of the general Average.

Thirdly, But the Inſurers at *Amſterdam* were of Opinion, ſince they evaded to contribute or advance their Part to the Charges of Appeal, they had no Right to be benefitted by it.

And as the Inſurers at *London* left it to *N. M--s* to make ſuch a Diviſion as he judged to be equitable, he found it reaſonable, ſince the Appeal was made in the Name of the Captain, and the Goods were reſtored to us by that Means, that we ought firſt to ſatisfy out of it, what was due to him, and thus a Part of what was charged at *Hamburgh* in the General Average ought to be conſidered as a Diſburſe made by the Captain upon the Ship and Cargo together, before they were ſeparated, and for which they jointly remained indebted, and now by his Appeal he had got the Goods reſtored, with only the Loſs of ſome Law Charges and ſome ſmall Diminution in its Value, he ought alſo to receive an equal Proportion for his Freight of what the reſtored Goods had yielded neat.

Thus *N. M--s* ſeparated the following Sums from the General Average regulated at *Hamburgh*, which he was convinced ought to be born ſeparately and ſolely by the Proprietors of the firſt releaſed Goods, *viz.* N°. Q.

Mks.

CASE XXXVI.

Mks. 1824 : 11 charged by *M.* and *A.* at *London* for proving particular Properties, *&c.*

500
77 : 9
300
58
6

} charged by *G.* at *Hamburgh* on ditto.

Mks. 2766 : 4

But admitted that of the *Mks.* 3897 : 12 charged for Men's Wages and Provisions.

These last restored Goods ought to bear a proportional Part at 34*s.* 2*d.* . . . . : £. 304 : 4 : 3
And further from the Ship's Charges of 370 : 1 : 2

£. 674 : 5 : 5

N°. R. And as the neat Produce of the Goods restored by the Appeal appeared
to have been £. 10793 : 15 : 11
Deduct Charges . . . 943 : 15 : 11

£. 9850

And the Goods first released *Mks.* 44070, making Sterling . . 3439 : 12 : 3
The Ship, *Mks.* 13930, Sterl. 1037 : 4 : 4

£. 14376 : 16 : 7

Therefore as £. 14376 : 16 : 7 is to £. 674 : 5 : 5, so £. 9850 will be to £. 462
Deduct Proportion of Charges 8¾ *per Cent.* . . . 40

To be made good as under . £. 422

Viz.

CASE XXXVI.

Viz. *Mks.* 44070 Goods
13930 Ship

Mks. 58000

If *Mks.* 58000 produce { 44070 ? Anſw. £. 320 : 13 to Goods.
£. 422 what ſhall { 13930 ? - 101 : 7 to the Ship.

Mks. 58000 £. 422

And as the Freight of the Goods condemned before, amounted to 1100 Ducats, or £. 254, we may compute, if £. 15390 their Coſt, yield neat £. 9794, then £. 254 ought to yield neat £. 159

And ſo the following Reſumen and Diviſion of the Whole reſulted :

Amount

CASE XXXVI. N°. S.

Amount of the Goods according to their Cost, and adding the Premium to be insured in full.

Account of the Value of the Goo were discharged by Appeal, wh been divided.

N°.

N. M--s's Policies made i

62 a 72	11 Packs Linnen	*Mk.* 14703 : 3	
73 a 84	12 ditto, ditto	18033 : 13	
91 a 100	10 ditto Skins	6559 : 12½	
	30 Plates of Copper	723 : 15	
107	1 Chest Linnen, 1/6 of *Mk.* 3927 : 1	654 : 8	
	Proportion of Charges	40	
		Mk. 40715 : 3½	
	2 *per Cent.* Comm.	814 : 4½	
		Mk. 41529 : 8	
	a 34 *s.* 2 *d.*	£.3241 : 6 : 6	
Prem. of £.3649 : 4 -	a 98 *per Cent.*		
	£.3576 : 4 : 5 -	334 : 17 : 11	
			£.3576 : 4 :

Pr. Ditto.

102 a 106	5 Chests 5/6 of *Mk.* 3927 : 1 -	*Mk.* 3272 : 9	
87 a 90	4 Casks		
108 a 112	5 Packs	- - 2050 : 1	
101	1 ditto -	- - 377 : 1	
113	1 ditto -	- - 253	
	Charges	- - - 5 : 12	
		Mk. 5958 : 7	
	2 *per Cent.* Comm.	119 : 3	
		Mk. 6077 : 10	
	a 34 *s.* 2 *d.*	£.473 : 11 : 5	
Prem. of 579 : 5 : 10	a 98 *per Cent.*		
	£.567 : 14 : 2 -	94 : 2 : 9	
			567 : 14 :

CASE XXXVI.

f the Elisabeth *and* Susanna, *Capt.* Tjert Bowes, *which as been insured, and what is left uninsured, and has*

London, are declared.

					Sums insured.	
nsured	£. 2750	- at 8 Guin^{s}.	£. 231	} in *London*	£. 3250	
	500	- at 9 ditto	47 : 10			
		$\frac{1}{2}$ *per Cent.* Comm.	16 : 5			
		Policy	4 : 6			
			£. 394 : 19 : 6			
)n unin- sured	399 : 4	- a 10 *per Cent.*	39 : 18 : 5	in *Leghorn*	226 : 17	
	£. 3649 : 4		£. 334 : 17 : 11			

nsured	£. 470	- a $15\frac{3}{4}$ *p. Ct.*	£. 74 : : 6	in *London*	470 :	
		$\frac{1}{2}$ *per Cent.* Comm. -	2 : 7			
)n unin- sured	109 : 5 : 10	- a $16\frac{1}{4}$ *per Ct.*	17 : 15 : 3	in *Leghorn*	61 : 19	
	£. 579 : 5 : 10		£. 94 : 2 : 9			

CASE XXXVI.

Pr. C. L. and *T.* in *London.*

46 a 47 — 2 Casks Quills *Mk.* 269 : 5
48 a 49 — 2 Packs Linnen - 1987 : 13
50 a 59 — 10 Casks Copper - 9077 : 14½
Certificate - 11 : 4
2 *per Cent.* Comm. 226 : 11
44 — 1 Chest Wire - 761 : 8
45 — 1 Cask Copper - 448

Mk. 12782 : 7½

a 34 *s.* 2 *d.* £.997 : 13 : 2
Prem. of 1153 : 7 - a 98 *per Cent.*
£.1130 : 6 132 : 12 : 10

1130 : 6 :

Pr. P. M. in *London.*

98 a 99 — 2 Casks Hogs-bristles - *Mk.* 472
100 a 101 — 2 ditto Quills - 268 : 15
104 a 105 — 2 ditto Linnen 3303 : 3
106 a 120 — 14 ditto Copper 8231 : 8
Certificate - 15 : 2
2 *per Cent.* Comm. 245 : 8

Mk. 12536 : 14

a 34 *s.* 2 *d.* £.978 : 9 : 10
Prem. of 1120 : 5 : 7 - a 10½ and 11
per Cent. - 119 : 7 : 7

1097 : 17 : 5

Pr. D. V. in *Amsterdam.*

11 a 13 } 40 a 95 } — *Mk.* 42082 : 15
Certificate - 46 : 8
2 *per Cent.* Comm. 841 : 11
64 a 73 — *Mk.* 5552 : 6
2 *per Cent.* 111 : 1

5663 : 7

Mk. 48634 : 9

a 34 *s.* 2 *d.* £.3795 : 17 : 4
Prem. of 4325 : 8 : 10 - a 9½ and 15½
per Cent. 443 : 1 : 3

4238 : 18 : 7

CASE XXXVI.

Insured	£. 1025	- a $11\frac{1}{2}$ *per Ct.*	£. 118 : 2	in *London*	£. 1025	
On uninsured	128 : 7	-	14 : 10 : 10	in *Leghorn*	72 : 19	
	£. 1153 : 7		£. 132 : 12 : 10			

Insured						
Pr. P. M.	£. 275	- a 11 *per Ct.*	£. 30 : 9 : 6	in *London*	£. 275	
p. Ct. Amsterd.						
Fl. 8500 or	772 : 3 : 7	- a $10\frac{1}{2}$ -	81 : 1 : 8	in *Amsterd.*	772 : 3 : 7	
On uninsured	73 : 2	-	7 : 16 : 5	in *Leghorn*	41 : 10 : 11	
	£. 1120 : 5 : 7		£. 119 : 7 : 7			

Insured						
Fl. 37000	£. 3363 : 12 : 8	- a $9\frac{1}{2}$ *p. Ct.*	£. 360 : : 5	in *Amsterd.*	3363 : 12 : 8	
On uninsured	426 : : 7	- a $9\frac{1}{2}$		in *Leghorn*	293 : 15	
	£. 3789 : 13 : 3					
Fl. 5000	454 : 14 : 6	- a $15\frac{1}{2}$ -	70 : 9 : 10	in *Amsterd.*	454 : 14 : 6	
Uninsured	81 : 1 : 1	- a $15\frac{1}{2}$ -	12 : 11	in *Leghorn*	46 : 1 : 4	
	£. 4325 : 8 : 10		£. 443 : 1 : 3			

CASE XXXVI.

27 a 63 *Pr. H. D.* in *Amsterdam.*
coſt *Hamb. B°. Mk.* 32780
Certificate - 22 : 14
2 *per Cent.* Comm. 655 : 10
Mk. 33458 : 8

58 a 61 } 85 a 16 }
coſt - - 8999 : 2
Certificate - - 3 : 12
2 *per Cent.* Comm. 180
Mk. 42641 : 6

a 34 *s.* 2 *d.* *£.* 3328 : 2 : 6
Prem. of 3830 : 6 : 8 - 11¼ *p.C.* a 98 *p.C.*
*£.*3751:7:9 - 425 : 12
3753 : 14 : 6

Pr. V. R. and *G.* in *Amsterdam.*
3 a 4 *Hamb.* coſt with
Comm. - *Mk.*3172 : 2
1 a 2 2638
*Mk.*5810 : 2

a 34 *s.* 2 *d.* *£.*453 : 9 : 6
Prem. of 554 : 15 : 8 - 11 *p.C.* a 98 *p.C.*
*£.*543 : 13 : 3 - 90 : 3 : 9
543 : 13 : 3

Pr. F. and *L.* in *Leghorn.*
2 a 14 *Hamb.* coſt and
Comm. - *Mk.* 2040 : 8

a 34 *s.* 2 *d.* *£.*159 : 5 : 2
Prem. of 177 : 6 : 9 - a 98 *per Cent.*
*£.*173:15:9 - 14 : 10 : 7
173 : 15 : 9

On *£.* 15390 : : 4 to pay 98 *per Cent.* - - *£.* 15082 : 4 : 1

CASE XXXVI.

nsured Fl. 41850	£. 3804 : 12	- a $11\frac{1}{9}$ -	£. 422 : 14 : 8	in *Amsterd.* 3804 : 12
On uninsured -	25 : 14 : 8	- a $11\frac{1}{9}$ -	2 : 17 : 4	in *Leghorn* 14 : 12 : 8
	£. 3830 : 6 : 8		£. 425 : 12	

Pr. V. and *R.* separate	£. 235 : 6 : 8	- a $10\frac{1}{2}$	£. 24 : 14 : 1	in *Amsterd.* 554 : 15 : 8.
	319 : 9	a $20\frac{1}{2}$ -	65 : 9 : 8	
	£. 554 : 15 8		£. 90 : 3 : 9	

Pr. F. and *L.* - - - - - - -	£. 177 : 6 : 9	in *Leghorn*	177 : 6 : 9
as above	14 : 12 : 8		
	46 : 1 : 4		
	293 : 15		
	41 : 10 : 11		
	72 : 19		
	61 : 19		
Dol. 4580 at 49 *d.*	226 : 17		
amount to £. 935 : 1 : 8	£. 935 : 1 : 8		

Is insured £. 14905 : : 1

And there remains for *H. M.* in *Hamburgh*, for the Interest uninsured - - - - - - 485 : : 3

£. 15390 : : 4

CASE XXXVI.

Upon which Sum has been in the Whole received,

Of *H. Z. per* neat Sale of all the Goods		£. 10793 : 4 : 11
Per one Year's Intereſt on £. 10500 Bonds		420
		£. 11213 : 4 : 11
Deduct Premium on this Obligation	£. 192 : 16 : 1	
Per ditto on £. 400 with Intereſt	16 : : 4	
Per ½ *per cent.* Commiſſion of *H. Z.*	55 : 10 : 10	
Per H. Z. Petty Charges	34 : 17 : 4	
		299 : 4 : 7
Delivered to us 109 *Eaſt-India* Bonds		£. 10900
By Caſh		14 : : 4
		£. 10914 : : 4
Repaid to *M.* at *Briſtol*		3 : 12 : 4
		£. 10910 : 8

Received

CASE XXXVI.

Received farther by us,

6 Months Intereſt on		£. 10900 a 2 *per cent.*	£. 218 :	:
6	Ditto -	Ditto a 1 ½ *per cent.*	163 : 10 :	
4 Months	7 Days	1500 a 3 *per cent.*	15 : 17 :	3
4	7	500	5 : 5 :	9
4	12	2000	21 : 9 :	4
4	13 £. 10900	900	9 : 19 :	2
4	14	4000	44 : 12 :	
4	14	2000	22 : 6 :	
			£. 500 : 19 :	6
Deduct Brokerage of 109 a 1 *s.*			16 : 7 :	
Diſcount		a 2		
			484 : 12 :	6
			£. 11395 :	: 6

Of which we have farther deducted,

To the Account of the Proctor *Farrant* -	£. 301 : 11 :	10
To the Sollicitor *Webb* -	180	
To private Diſburſements, by *N. M.*	81 : 6	
To ditto, Petty Charges -	28 : 14	
To our Commiſſion 2 ½ *per cent.*	284 : 18	
To Intereſt of £. 450, advanced at *Amſterdam* - -	16 : 17 :	6
To *H. M.* in *Hamburgh* for his Trouble and Charges -	50	
	943 : 7 :	4
So there is ſaved in the Whole to be divided - -	Neat £. 10451 : 13 :	2

Of

CASE XXXVI.

Of which we made good,

To the Heirs of *P--d W.* in *Amſterdam*, for a Parcel of *Nurenbergh* Toys, and to *J. S.* for a Parcel of Glaſſes, which are not comprehended in the above general Account	£. 76 : 4	
To the Owners of the Goods firſt releaſed, charged too much -	320 : 13	
To the Owners of the Ship -	101 : 7	
To the Owners of the Ship for Freight of Goods releaſed ſince - -	159	
		657 : 4
Remain		£. 9794 : 9 : 2

N°. T. Which proportioned on the £. 15390, makes 63 *per cent.* and has been made good to all the Underwriters and Concerneds.

N°. U. In Juſtification of the foregoing Diviſion, it may be neceſſary to ſhew a Reaſon why the Goods (which were all publickly ſold under their known Marks, and had ſuſtained Damages, ſome more ſome leſs, according to their Kinds) were not particularly applied to their reſpective Proprietors. Whereto it muſt be anſwered, That it was becauſe, in caſe the Appeal had been loſt, there would have been no other Way to recover the Charges, than upon the original Value or prime Coſt of the Goods altogether, including therein the Premium paid for Inſurance; and in that Conformity to have made the Inſurers pay their Proportions for the Sums reſpectively underwrote by them, and the Owners to bear the Part which remained uninſured. And therefore there could not be now any Way to divide the Salvage more equitably than in the Manner it is ſtated above; which comes out at 63 *per cent.* and which all the Inſurers approved of and accepted with Thanks: As did likewiſe *H. M.* at *Hamburgh* for the uninſured Intereſt of his Friends in *Spain*, who, as he particularly acknowledged, received by this Diſtribution £. 305 : 11, which they had never expected.

CON-

CONCLUSION.

As many of the Points diſcuſſed in the preceding Pages have never been ſubjected to the Examination of the Public, we do not doubt but that ſome Perſons of Capacity and Experience in Mercantile Affairs will be induced to weigh and conſider them maturely: And from ſuch alone it is, that we ſhould be glad to be informed where we have been in the wrong, provided they ſhould find us ſo. For if the Public are but led into a true Way of thinking and judging, conſonant to Reaſon, Juſtice, and Equity, it will be a Matter of Indifference to us by what Means they attained to it, or who is their Guide.

We ſhall not ſcruple to acknowledge, that as plain as many of theſe Points ſeem to be, we have more than once changed our Sentiments in regard to ſeveral of them; and notwithſtanding the major Part of them, in the Manner they are now ſtated, may appear to be ſo many obvious Truths, hardly worth apprizing the Public of, (which if it ſhould in reality prove ſo, we ſhould not at all be diſpleaſed at it) we would ſtill recommend to all ſuch public-ſpirited Merchants, who would take a Pleaſure in doing ſomething towards promoting the Good of the whole Body of their Profeſſion, and who have Opportunities of ſeeing and experiencing Tranſactions of the like Nature, to proceed in the Plan we have here chalked out, and ſet down their Obſervations with the ſame Candour that we have done: And by the Diverſity of Caſes, as well as of the Intricacies and Difficulties reſulting therefrom, which Time might preſent to their View, they would find that a great deal more remains unobſerved than has been touched on already; and that the longer we apply ourſelves to this Practice of Obſervation, the more we ſhall be convinced that we knew but little before.

If we look back to the Suits at Law which have been carried on for many Years paſt about theſe Affairs, and could at the ſame Time be let into a true Detail of their Merits, we ſhould find that moſt of them have ariſen from our not having

given ourſelves the Trouble to explain our own Meaning, and the accuſtomary Methods of ſuch Dealings wherein we were reſpectively engaged: And we are thoroughly perſuaded that the Lawyers of moſt Eminence will allow, that ſuch Matters as are contained in the foregoing Caſes, may be much better decided by experienced Merchants, and good Accomptants, than by Perſons who have ſtudied the Law only.

SOME

SOME

BRIEF HINTS

TO

Merchants and Inſurers,

Concerning the RISKS *to which* TRADE *and* NAVIGATION *is expoſed in Time of* WAR.

AFTER having ventured in the foregoing *Eſſay on Inſurances*, and in our Remarks on the Caſes annexed to it, to point out ſeveral Things, wherein the received Ordinances, Statutes, and Cuſtoms, ſeem to us ſomewhat deficient, we will make bold to add a few Pieces, wrote by great Lawyers and Stateſmen on the Freedom of Navigation; and give ſome Mercantile Hints which may alſo deſerve Conſideration hereafter.

We ſhall begin with that remarkable Piece which was publiſhed by the Court of *Pruſſia*, concerning the Seiſure and Detention of neutral Ships during the laſt War, and *England*'s Anſwer to it. And here, leaving the different Explanations of Treaties and the Law of Nations, made by thoſe great Men, to ſtand upon their own Bottom, we muſt obſerve, that if the *Pruſſian* Merchants had been ingenuous enough to lay open entirely how their Risks were connected with Inſurances in *England* and other Parts, that great and wiſe Prince would doubtleſs have conſidered many of them in a different Light. For if his *Pruſſian* Majeſty had been informed that the greateſt Part of the Adventures made by the *Sileſia* Merchants were inſured in *England*, and that the Charges of reclaiming them, and the Loſſes ſuſtained by their Detention, were paid by the *Engliſh* Inſurers, it would naturally have occurred to him, that the Retention of the *Sileſia* Loan was in ſo far but with-holding from one *Engliſhman*

what was to be paid to another *Engliſhman*. It is notorious to all the Mercantile World, that as the *Engliſh* Inſurers pay more readily and generouſly than any others, moſt Inſurances are done in *England:* The *Engliſh* Inſurers, therefore, muſt undoubtedly have bore the greateſt Share in thoſe Loſſes; and what was not inſured in *England*, muſt have been done at *Amſterdam*, *Hamburgh*, or *Cadiz:* For it is well known that in *Sileſia* and *Stettin* there can be no Inſurance made for any Sums, and that the *Sileſia* Merchants are not ſuch bold Adventurers as to run thoſe Risks.

The Charges of obtaining Reſtitution of the Ships and Goods would in many Caſes not have amounted to half ſo much, had not the Concerned been ſo backward or dilatory in ſending the neceſſary Proofs, and negligent in remitting Money, or procuring Credit for it, to proſecute their Claims. Thoſe eſpecially who relied much upon Diſtinctions which they pretended ought to be paid to their Shares, did more Harm than Good to the common Cauſe: For by their tying up too much the Hands of the People here, who had the Care of ſolliciting the Reſtitution of their Goods, the prudent Mercantile Maxim in ſuch Caſes, rather to give away a little, than to puſh Things to Extremity, could not be ſo immediately embraced.

Out of the Number of Ships contained in this Liſt, we ſhall annex to it the Particulars of one named the *Anne Elizabeth*, Capt. *Daniel Schultz*, whereof the *Engliſh* Anſwer ſays, That by impartial Arbitrators the Damages given amounted to 2801 *l.* 12 *s.* 1 *d.* whereby Merchants will be fully ſatisfied, that all the Allowances were made here that could be reaſonably expected. But perhaps it was not rightly explained to the Commiſſion eſtabliſhed at *Berlin* how it came to paſs that Capt. *Schultz* did not receive forthwith his Part of thoſe Damages allowed: And as we know the whole Affair, having been one of the Arbitrators, we will here give the Reaſon, *viz.* That after the Captors were condemned to pay the above Sum of 2801 *l.* 12 *s.* 1 *d.* their Securities (it was an *Engliſh* Privateer that brought her in) appeared ſomewhat doubtful, and inſiſted upon having the Cauſe re-heard before the Lords; whereupon the Perſons who

who acted for the Claimants having been all along out of Pocket for theſe Charges, conſented to a Compoſition, and accepted of what they could get, ſince from their Principals they never had obtained any Remittances on Account of their Diſburſements.

It is true, that the Charges of obtaining Reſtitution of theſe detained Ships and Cargoes ran very high, and eſpecially of thoſe neutral ones which were loaded at *Hamburgh* by the Generality of Commerce, the Cargoes of ſome of which belonged perhaps to fifty or an Hundred different Owners, each of whom neceſſarily behoved to make out the Proof of his Property; for which he who had but one Bale muſt pay the ſame Expences as if he had had an Hundred Bales for his Account. It muſt needs therefore run high: And although there may be Reaſon enough to complain of Extravagancy in many Caſes, ſtill it cannot be denied that in our Court of Admiralty the uſual Way in former Wars was kept up in its Proceedings during the laſt: And without depreciating the Merit and Learning of the great Men employed in the *Pruſſian* Court of Enquiry, we Merchants muſt be ſenſible that they could be no Judges whether there was any juſt Cauſe of Seizure or not, ſince they had not all the Ships Papers. And when we conſider the Number of People who loaded in ſuch Ships, we can hardly doubt that there ſhould be ſome who could not prove the Property to be neutral.

Though it cannot be expected from Merchants that they ſhould ſtudy thoroughly all the Laws of Nations, yet we may ſuppoſe that moſt of them know ſomething of the Contents of Treaties of Commerce, and we believe that hardly any could be ſo ignorant, as not to know that there was a Difference in the Treaties of Commerce between *England* and *Denmark* and *Sweden*, and between *England* and *Holland*, and *England* and *France* and *Spain*, and that only between the four laſt, the Rule "of free Ships making free Goods, though belonging to Ene-"mies, except contraband," had been reciprocally eſtabliſhed. Farther, every Merchant who knew any Thing of what paſſed in former Times of War, muſt naturally conclude that it was venturing too much, to rely wholly upon the Stipulations made in Treaties, which in Wars of any Length have been never ſtrictly kept to. Hence, when Merchants intend to ſend Goods

Goods by Sea for their own Account, to any Country, in Time of War, the chief Thing which determines them is the Premium asked for the Inſurance: And the Inſurers, notwithſtanding they are not ignorant to what Vexations Shipping is generally expoſed in Times of War, will be tempted by an high Premium to expoſe themſelves to all Chances, and often rely more upon the Width of the Sea, than upon the Favour they have to expect from Treaties.

For the Uſe of Merchants who may be deſirous to know what paſſed with regard to Navigation, in former Wars, we have preſerved for them, and here ſubjoined ſome remarkable Paſſages which we met with in ſearching after it.

Theſe conſiſt firſt of Extracts of Letters written by that great Stateſman *John De Witt*, Penſionary of *Holland*, and others received from the *Dutch* Ambaſſadors employed at the Courts of *France* and *England* during his Miniſtry, which have been publiſhed at the *Hague* $17\frac{23}{24}$, in four Parts in Quarto. It appears by them that this great Miniſter, being ſenſible that *Holland*'s Wealth depended chiefly upon keeping Peace, and having a free and unmoleſted Navigation from and to all Parts, laboured hard to obtain from *England* and *France*, by particular Treaties of Commerce, the Conceſſion, that free Ships ſhould give Freedom to all Goods, even thoſe belonging to Enemies, except Contraband.

His Letters wrote to, and thoſe received from *William Boreel*, in $16\frac{53}{54}$, (Part I. Page 77, 78) ſhew that *France*, by a proviſional Treaty made in 1646, and by a Declaration of the *French* King in 1651, having allowed this Rule to the *Dutch*, *were the firſt who deviated from it.* Mr. *Boreel* writes, (Page 66, 68) "They now ſay that their Enemies ought not to be "protected nor ſerved by Ships of the States, in carrying their "Goods: That ſuch Goods would be taken out of the *Dutch* "Ships, and confiſcated as good Prize." He adds, "and the "*French* may perhaps even fall upon maintaining their old "Maxim, *Que la Robe d'Ennemi confiſque celle d'Ami.*"

His

His Letters wrote to, and thoſe received from *William Nieupoort*, 1656, (Part III. Pag. 226, 230, 332, 333, 340, 426, 427) ſhew that the *Dutch* never could obtain from *England*, during the Time of *Oliver Cromwell*, that this Rule ſhould be allowed; and it ſeems that *England* conſidering herſelf to be the firſt of the Maritime Powers, thought it more political that *Holland* ſhould always remain in the ſame Intereſt, and go along with her.

We find in *Aiſtma*, 36th Book of State Affairs and of War, *Anno* 1656, that upon Mr. *Nieupoort*'s ſo often-repeated Sollicitations about the Marine Treaty, the Anſwer given by the *Engliſh* was, That the Demand of "free Ships, free Goods," and Paſſport to their Form, was very unjuſt; and the Reaſons they alledged are as ſtrong as any that have been made Uſe of ſince.

But in King *Charles* the Second's Reign this Rule was allowed by the Treaty of Marine concluded the 28th of *June*, 1667; and on this Occaſion Sir *William Temple*, in a Letter of the 21ſt of *May*, 1667, to my Lord Ambaſſador *Coventry*, writes, "Mr. *Godolphin* aſſured me that all Parts of the Treaty of "Commerce are ſo much to our Deſire and Advantage, that "he hoped to ſee many a rich Man in *England* by it." It would ſeem that Mr. *Godolphin*'s Maxim was, that *England* ſhould have nothing ſo much in View as a free Navigation for her Merchants. And indeed this is certainly of the greateſt Conſequence; but the Way to have made it effectual would have been to be always watchful, and keep a naval Power ſuperior to that of our Neighbours, and not to ſuffer, at the Time of treating, Part of our naval Strength *to be ſurprized and burnt at* Chatham, *by the then vigilant and powerful* Dutch *Fleet:* By which Action, it ſeems, they forwarded the Concluſion of ſuch a Treaty of Marine and Peace, as they had long deſired in vain.

But as Merchants it is not ſo much our Buſineſs to enquire whether it was good Policy to make ſuch Treaties, as to know how long they were ſtrictly kept.

J. Meer-

J. Meerman, one of the *Dutch* Ambaſſadors in *London*, in a Letter to the Penſionary, dated *Feb.* 1, 1668, ſays, That having complained to the King that the Privateers of *Oſtend*, with Commiſſions from *Spain*, diſturbed their Navigation, his Majeſty anſwered, that he had alſo heard of it, and conſidered it as Acts of Pirates; and that he would give Orders, if any of his Subjects ſhould be found on board of thoſe Privateers, to have them hanged. Mr. *Meerman* farther ſays, " It would ſeem as " if theſe Privateers were not at all acquainted with the 14th " Article of the Treaty of Marque concluded by their High " Mightineſſes with the King of *Spain*, which ſays, *that free* " *Ships ſhall make free Goods.*"

In King *William*'s Reign, when *England* and *Holland* were allied in a War againſt *France*, they went ſome Steps farther; for their Declarations and Notifications made to all Courts inform us, that they would not permit any neutral Nation to navigate and trade with *France* at all.

It doth not appear that in this laſt War *England* went farther beyond the Bounds of Neutrality than formerly. Hiſtory will afford Examples enough, that whatever Power gets the better at Sea or Land in Time of War, commonly makes the moſt of it; the fair Trader always ſuffered by the ſiniſter Dealings of the unfair ones; and ſo much as one Side ſtudied to conceal Truths, the other ſtudied to diſcover them.

By an Extract out of Sir *Leonine Jenkins*, hereunto ſubjoined, neutral Merchants will ſee, that during the War *Anno* 1676, ſome uſed to behave in the ſame Manner, and that the ſame Things were practiſed, and the ſame Conſtructions made in our Courts then, as in the laſt War. We do not find that in *France* or *Spain* they have been dealt with much better, although they might juſtly have expected more Favour, ſince thoſe Crowns having hardly any Shipping of their own left, wherewith to carry on Trade, ought in good Policy to have ſet the Example of letting all neutral Shipping paſs unmoleſted, which would have been much to their Advantage, if they who remained

remained the Maſters of the Sea would have given the ſame Freedom.

But might not thoſe who fought the Battles ask, What ſignifies our being Maſters at Sea, if we ſhall not have Liberty to ſtop Ships from ſerving our Enemy? And when we examine to the Bottom of the Thing, it appears very evident, that Sea-Battles are not fought ſo much to kill People, as to be Maſters of Trade, whereby People live; and by ſtopping their Supplies, to compel our Enemies in the End to live in Friendſhip with us.

We will conclude this Introduction by a few Rules to be kept in Mind by Merchants and Inſurers, which are:

1. That every one ſhould avoid all ſuch Dealings whereby the State in which he lives may be expoſed to ſuffer more than he in private can get by them.

2. That it is dangerous to concern ourſelves with Numbers of People, and in Ships whereof we know not all the Circumſtances.

3. That ſuch States as enjoy a Neutrality, ought not to permit their Subjects to lend their Names for trifling Commiſſions; which always will cauſe Interruption.

4. That by keeping themſelves within Bounds, neutral States will raiſe leſs Suſpicion; and one, two, or three Merchants, who are able to fit out a whole Ship and Cargo fairly and ſolely upon their own Account, will add more Wealth to the State, than an hundred others, who merely ſerve as Factors, and lend their Names to others; beſides, that in Caſes of Detention, it will be leſs expenſive, and leſs difficult to get out of the Scrape.

5. That an Inſurer upon a Cargo which he knows wholly to be the Concern of a few Perſons, may rely more upon being cleared ſoon, and ſo ſign at a cheaper Premium.

6. That Merchants and Inſurers may truſt more to obtain Freedom of Goods which juſtly and fairly are their own Property, than of others that are not ſo, under what great Patronage, or with what Art, ſoever they may be cloaked.

EXPO-

EXPOSITION

OF THE

MOTIVES,

FOUNDED UPON

The univerſally-received LAWS of NATIONS,

Which have determined the King (of PRUSSIA) upon the repeated Inſtances of his Subjects trading by Sea, to lay an Attachment upon the Capital Funds, which His Majeſty had promiſed to reimburſe to the Subjects of *Great-Britain*, in Virtue of the Peace-Treaties of *Breſlau* and *Dreſden*;

AND TO PROCURE

Out of the ſaid Capitals, to his ſaid Subjects, an Indemnity for the Loſſes which they have ſuſtained by the Depredations and Violences of the *Engliſh* Privateers, exerciſed upon them on the High Seas.

Memorial of Mr. MICHELL, *Secretary to the Legation of His Majeſty the King of* PRUSSIA: *Preſented to the Duke of* NEWCASTLE.

IT is by Order of the King his Maſter, that the underſigned Secretary to the Legation of his Majeſty the King of *Pruſſia*, is obliged to remind your Excellency of the preſſing Solicitations employed by himſelf and Predeceſſor, at ſeveral Times, for obtaining, from the Equity, and through the Juſtice, of the Miniſtry of this Court, the Satisfaction which the *Pruſſian* Merchants have demanded, of being indemnified for the Violences and Depredations they have ſuſtained from ſome of the *Engliſh* Privateers, during the laſt War. Your

Excellency will remember, that theſe Merchants had, ſome their Ships taken from them, ſome their Effects forced away; others had them detained; and altho' it was evidently made appear, that none of them dealt in Contraband Trade, they have not hitherto been able to obtain any Redreſs, neither from the *Engliſh* Tribunals to whom they applied, nor from the Government, before which they laid their Complaints: And that, by a ſingularly-ſtrange Contradiction, when even theſe Tribunals found no ſpecious Pretext for confiſcating their Ships and Effects, and conſequently diſcovered the Injuſtice of the Prize, they nevertheleſs did not fail to condemn the Proprietors in Coſts, to the Behoof of the Privateers, and levyable upon the Capture.

The Laws of Equity ought inconteſtably to be the ſame for all Nations; and an *Engliſhman* ought to expect the finding a Sanctuary at *Berlin*, in the Juſtice of its Tribunals, againſt the Violence of their Subjects, the ſame as a *Pruſſian* ought to find it at *London*, againſt any illegal Procedure from theirs. It is upon this Principle, that good Faith and mutual Commerce ſtand eſtabliſhed between Nation and Nation: It is alſo upon this very Principle, that the Merchants of *Europe* traffic with their Neighbours, and that the *Engliſh* Nation carries on ſo advantageous a Commerce. All Countries look on theſe Ties of Equity as ſacred and inviolable; and they reſpect them at Home, that they may receive the Benefit of them Abroad, whenever the Neceſſity comes to exiſt, of their having recourſe to them.

His Majeſty believed, that, with a Nation ſo full of noble Sentiments, ſo generous, as the *Engliſh* one, it would be no Difficulty to obtain for his Subjects the Satisfaction that was due to them; and your Excellency will remember, that, in caſe of a Refuſal, the Intimation was not omitted, that his Majeſty, the King of *Pruſſia*, would find himſelf obliged (tho' with Regret) to ſeize the Capital Funds for which the Dutchy of *Sileſia* ſtood mortgaged to the *Engliſh*; eſpecially as his Majeſty had no other Means of indemnifying his Subjects.

The Intentions of the King my Maſter are pure: His Majeſty was determined to fulfil, with all Integrity, the Engagements he has contracted with the *Engliſh* Nation, and acquit the Debts

Debts incumbent on him; but he is determined at the ſame Time to make good to his Subjects the Protection which he owes them.

That his Majeſty might precipitate nothing in an Affair of this Nature, and in order to afford the *Engliſh* Government Time enough for Reflection, his Majeſty continued diſcharging the *Sileſia* Loan until Payment of the laſt Term; but when his Majeſty ſaw that neither the Equity of his Demands, that neither Time, Reaſons, nor repeated Importunities, produced any Effect, in Favour of the *Pruſſian* Merchants, the King thought himſelf obliged to have recourſe to the laſt Meaſure that remained in his Power, that of defalcating from the Money due to the *Engliſh*, the Sum which his Subjects demanded for their Indemnification.

The ſame Law that obliges us to the fair Dealing of paying our Debts, authorizes us to exact the ſame Meaſure of Juſtice from our Debtors. What a ſingularly-ſtrange Inſtitution of Right would that be, that ſhould regulate all in Favour of one Side, and nothing in Favour of the other? In this Affair, however, the Point in Agitation is not even what is owing from the *Engliſh* to the *Pruſſians*, but what is forcibly with-held from them. If it is but juſt to pay one's Debts, it is yet more ſo to repair the Damages one has occaſioned by one's own Fault, and with premeditated Deſign.

After Reaſons ſo ſtrong, after having, in vain, demanded Reparation from thoſe who alone could make it, is there any Colour whatever for pretending that the King ſhould give up his own Subjects? And could he do it, even if he would? He owes the laſt Term to the *Engliſh*; he ſtops it, and, after having acquainted the *Britiſh* Government, upon all Occaſions, of the Meaſures his Majeſty could not but indiſpenſably take, he appointed a Commiſſion to judge, with Impartiality, and with a rigid Exactneſs, the Pretenſions of the *Pruſſian* Merchants. At the Head of this Commiſſion too his Majeſty placed a Man, whom to name, ſuffices to ſanctify the whole Procedure. The High Chancellor (*Cocceii*) then, three Miniſters of State, and ſeveral Counſellors of Juſtice, have examined the Claims of the Merchants, and liquidated their juſt Amount.

This

THIS Commiſſion having terminated this Affair, the Under-ſigner has the Honour to preſent, encloſed here-with, to your Excellency, Copies of the Decrees given upon the different Claims of the *Pruſſian* Subjects, upon that of each Merchant ſeparately; whence it reſults, that of 239,850 Crowns, which thoſe Merchants eſteemed due to them, the Commiſſion has adjudged to them no more than 159,486 Crowns, 20 Gr. Principal, and 33,283 Crowns Intereſt, at the Rate of 6 *per Cent.*

THO' his Majeſty has all the Reaſon to be perſuaded, that the ſaid Commiſſion has proceeded according to the Forms of the moſt impartial Juſtice, his Majeſty has, nevertheleſs, ordered the Under-ſigner to declare, in the preſent Memorial, that his Majeſty is diſpoſed to have any conteſted Facts examined afreſh by the ſaid Commiſſion, if any Officers, or *Engliſh* Privateers, who ſhall believe themſelves wronged thereby, thinks proper to interfere therein, or to have the Judgment reformed, in caſe the Pleas of the adverſe Party, ſo ſuing, ſhould be found valid.

THE King fixes, for the Exhibition of theſe Pleas, the Term of three Months, reckoning from the Day of this Declaration. As the Liſt of the ſeveral Captures annex'd to this Memorial contains the Names of thoſe who made them, his Majeſty refers it to the good Pleaſure of the *Britiſh* Government, in what Manner it ſhall be proper to inform the Parties of the Judgment pronounced, that they may enter their Pleas againſt it, according to Right. If, nevertheleſs, the ſaid Term lapſes without any one's interfering in their own Vindication, his Majeſty will abide by the Decree of his Council, and in purſuance thereof, will order the Defalcation of the Sum adjudged to his Subjects, including the Intereſt thereon at 6 *per Cent.* until the 10th of *July* of the current Year; which ſaid Defalcation, ſo ordered from the Money due to the *Engliſh*, amounts to 194,725 *Brandenburg* Crowns, 4 Gr. and 5 Deniers, and is to be applied to the Indemnification of the *Pruſſian* Merchants. His Majeſty at the ſame Time declares, that he is ready to order Remittance to be made to the Commiſſioners of the *Sileſia* Loan, of the Reſidue of what is owing upon that Claim, both on account of the Capital,

tal, and of the Intereſt growing thereon, at the Rate of 7 *per Cent.* to the tenth of *July* of the preſent Year. *Always provided*, that the ſaid Commiſſioners ſhall iſſue an authentic Releaſe for the ſaid Principal and Intereſt.

In Caſe that, againſt all Expectation, they ſhall in *England* refuſe to come into this ſo equitable a Diſpoſition, I am to declare to your Excellency, that the King will order the ſaid Sum to be judicially delivered to his Chamber of Juſtice in *Berlin*, there to remain in Depoſit, till it ſhall pleaſe the Proprietors to draw it out by furniſhing proper Diſcharges: and as the Growth of the Intereſt naturally ceaſes after this Procedure, his Majeſty expreſsly proteſts againſt being thence-forward accountable for any; and in Virtue of this authentic Proteſt, his Majeſty holds the Debt upon the *Sileſia* Mortgage entirely extinguiſhed, and that Dutchy fully exonerated from all Obligations with regard to it.

London, *Nov.* 23, 1752.

Signed

MICHELL.

SEC-

SECTION I.

WAR having been kindled between the *Engliſh* Nation on one Side, and the Kings of *France* and of *Spain* on the other; the King, for the better Security of the Commerce of his Subjects, took the Precaution of addreſſing to the Sieur *Andrié*, his Miniſter at *London*, an Order bearing Date the 14th of *April*, 1744, by which he charges him,

To inform himſelf from the *Engliſh* Miniſtry, of what ſpecifically was held contraband with them, and whether Grain, Timber, Planks, Hemp, Linſeed, Linnen, and the like, were comprehended therein, that the King might adviſe his Subjects thereof, and give them the neceſſary Inſtructions, upon the Manner in which they ſhould continue their Commerce.

SECTION II.

THE Declaration, which the Lord *Carteret* made to the Sieur *Andrié*, in the Name of his Majeſty the King of *Great-Britain*, and of which he gave Advice in his Relation of the 18th of *May*, 1744, imports,

That the King's Flag ſhould be reſpected equally with that of other Powers in the Alliance of Great-Britain, *excepting only ſuch Veſſels as ſhould carry warlike Stores to the Enemies of the* Britiſh *Nation.*

SECTION III.

THE King having required a more explicit Declaration upon all the Subject Matters contained in the Memorial which his Miniſter had preſented thereon, the ſaid Sieur *Andrié* in his Relation of the 29th of *May* and 9th of *June* adviſed,

THAT the Lord *Carteret*, Secretary of State, had repeatedly aſſured him, *N. B.* in the Name of the King of *Great-Britain*, that NONE OF THOSE ARTICLES, ſpecified in the Order given to the ſaid Sieur *Andrié*, ſuch as *Wood* and other Materials for the

the Conſtruction of Ships, neither alſo Cordage, Sails, Hemp, Linſeed, and the like, were reputed contraband: That the *Engliſh* Nation would carefully reſpect the Flag, and Subjects of the King; and that the Commerce of theſe laſt ſhould not in the leaſt be moleſted, *provided they abſtained from carrying any* WARLIKE STORES *to the Enemies of* Great-Britain (*which Stores are, NB. NB. ſpecified in all the Treaties between the Maritime Powers) nor any* VICTUALLING STORES *to Places beſieged, or blockaded by the ſaid Nation.*

THAT, for the reſt, the Commerce ſhould remain free to the Neutral Powers, N. B. *upon the ſame Footing, as in Times of Peace.*

SECTION IV.

IT is proper to remark here, that when the ſaid Sieur *Andrié* required from Lord *Carteret* a Declaration thereon in Writing, he anſwered him both the Times, he ſpoke to him of it, that it was not the Practice in *England.*

SECTION V.

LORD *Carteret* having ſpecifically referred, for what is called contraband, to the Treaties concluded between the Maritime Powers, the King, ſuper-abundantly, ordered the Treaties, concluded in 1674 between *England* and *Holland*, to be examined; and it was found in them, that all the Particulars, which Lord *Carteret* had declared to the Sieur *Andrié* to be contraband, or non-contraband, were ſpecifically ſet forth; for in the IIId Article of the ſaid Treaty are named as Contraband:

> ARMS, Bombs, and all that belongs to them, Powder, Fire-Arms, Mortars, Balls, Sabres, Lances, Petards, Arquebuſes, Grenadoes, Salt-petre, Cuiraſſes, and other Accoutrements of War; as alſo Soldiers, Horſes, Saddles, *&c.*

AND by the IVth Article, in the Number of Non-contraband are comprized,

CLOTHS, Wool, *Flax*, Cloathing, Shirts, Tin, Lead, Coals, all Sorts of *Grain*, Tobacco, Spice, Salt Meat, Cheeſe, Butter, Wine, Salt, and all Sorts of Proviſions, Maſts, *Planks*, *Timber*, and other *Wood*, fitting, *N.B.* *NB.* for building, and repairing Ships, and, in general, *all Merchandize* not comprehended in the preceding Deſcription; inſomuch, that it is permitted to Allies, to tranſport theſe laſt Articles of Merchandize to the Enemies Places, excepting only, *N.B.* ſuch as ſhould be actually under the Circumſtances of a Siege, or Blockade.

IT is certain, that in the preceding Wars the *Engliſh* Nation held for Contraband *preciſely no other Articles but what were for the direct Uſe of War.*

SECTION VI.

IN Conſequence of this Declaration, which the King communicated to his Subjects, he gave them Direction that, in WARLIKE STORES excepted, they might freely trade as in Time of Peace.

SECTION VII.

THE *Engliſh* Privateers, for more than one Year, reſpected the *Pruſſian* Flag, and ſuffered to paſs without Hindrance all the Veſſels of that Nation, even thoſe which were loaded with *Plank.*

It was not till *October*, 1745, that, for the firſt Time, they took it into their Heads to ſtop Veſſels loaded with *Plank* for *France*, and would not let any Timber paſs: but the Depredation was at length puſhed ſo far, that the Privateers, although the ſaid Veſſels were loaded with no other than Merchandize viſibly free, and that their Commanders aſſured them of it, by the Exhibition of their ſailing Orders, Bills of Lading, and Certificates, not content with ſtopping them, they took from them all that they found for their Purpoſe, and carried them, forcibly, into their Ports.

AMONGST

AMONGST others it happened, that a Privateer having taken a Ship belonging to *Embden*, loaded with Salt, not ſatisfied with plundering the Cargo, and the Crew of their Wearing Apparel, he baſely miſuſed and beat them.

SECTION VIII.

THE King, ſolicited by the repeated Complaints of his Subjects, having on this Occaſion ordered a Number of Repreſentations to be made, as well by the ſaid Sieur *Andrié*, as by the Sieur *Michell*, his Secretary to the Embaſſy, Lord *Cheſterfield*, then Secretary of State, anſwered in Writing of the Date of $\frac{5 \text{ January, } 1747}{26 \text{ December, } 1746}$;

THAT the King of *Great-Britain*, willing to omit no Occaſion of manifeſting all the Regard he had for the King of *Pruſſia*, made no Difficulty of declaring, that he would offer no Hinderance to the Navigation of the Subjects of *Pruſſia*, ſo long as they ſhould exerciſe their Commerce in an allowable Way, and *ſhould conform to the ancient Cuſtoms eſtabliſhed and received between Neutral Powers.*

SECTION IX.

AND when, on the Occaſion of the Capture of a *Dutch* Ship, called the *Three Siſters*, the Secretary *Michell* made freſh Repreſentations, and demanded Satisfaction thereon of Lord *Cheſterfield*; that Lord declared to him on the $\frac{11}{22}$ *Sept.* 1747,

THAT the Intention of *Great-Britain* was, *N. B.* to keep to the Declaration of the Lord *Carteret*, made, *N. B.* in the Name of this *Britannic* Majeſty to the ſaid Sieur *Andrié* at the Beginning of the War.

SECTION X.

THINGS however remained on the Foot ſimply of theſe Declarations, without the leaſt Satisfaction having been given, either for the firſt Damages, and the Inſolence of the Privateers, or for the Depredations which went on encreaſing in the Years 1747 and 1748, although the King had at ſeveral Times or-

dered his Declaration to be made, that he would make accountable for them thoſe Capital Funds of the *Engliſh* which he had engaged himſelf to pay them, in Acquittal of *Sileſia*, by the Treaties of Peace of *Breſlau* and *Dreſden*; and that he would out of them indemnify his Subjects.

SECTION XI.

THIS is what, at length, has conſtrained the King to yield to the preſſing Inſtances, and to the repeated Solicitation of his Subjects, to take their Cauſe effectually in Hand, to employ to that End thoſe Means dictated as well by Reaſon, as by the Law of Nations; and, in a Word, to repair his Subjects Damages out of the Capital Funds of the *Engliſh* in his Hands.

SECTION XII.

BUT that the whole Univerſe may be plainly convinced of the unjuſtifiable and illegal Procedure of the *Engliſh* Privateers, the following Queſtions ſhall be examined here, which are relative to the Grievances of the *Pruſſian* Subjects, and which will ſerve to ſtate them in their full Light. To wit,

I. *Whether the* Engliſh *Privateers had a Right to ſtop the* Pruſſian *Veſſels on the high Seas, to ſearch them, and, notwithſtanding the Exhibition of their ſailing Orders, and Bills of Lading, by which they proved they had no Contraband on Board, to carry them forcibly into the Ports of* England?

II. *Whether the ſaid* Engliſh *Privateers were warranted to ſtop, on the high Seas, the* Pruſſian *Veſſels, under the Pretext,* that there was Merchandize on board them, that belonged to the Enemies of the *Britiſh* Nation? *And whether they had a Right to carry them into their Ports, and thereby retard the Courſe of their Navigation?*

III. *Whether the ſaid Privateers had a Right to ſtop, on the high Seas, other Neutral Ships, ſuch as thoſe of* Sweden, Holland,

Holland, Denmark, Hamborough, &c. N. B. *freighted, in the Whole, or in Part, by* Pruſſian *Subjects, to carry them into* England, *to detain them whole Years, and diſturb in this Manner the Trade of the* Pruſſian *Subjects?*

IV. *Whether the Sorts of Merchandize, loaden upon* Pruſſian *Bottoms, or on Neutral Ones, by the Subjects of* Pruſſia, *and which were confiſcated from them, in Virtue of the unjuſt Decrees given againſt them by the* Engliſh *Tribunals, were really Contraband?*

V. *Whether the* Engliſh *Miniſtry had a Right to refer to a Tribunal of Marine, eſtabliſhed in* England, *the Deciſion of Differences of the Nature of thoſe examined in the preceding Queſtions, when thoſe Differences are in Agitation between two free Powers; and to want to oblige the aggrieved Power, who demands Satisfaction, to abide by the Deciſions of ſuch a Tribunal?*

VI. *Whether in fine, on the other Hand, the King is not fully juſtifiable, in his giving Way to the Attachment, which his Subjects have requeſted him to lay on the* Engliſh *Capital Funds, ſtipulated by the Peace-Treaties of* Breſlau *and* Dreſden, *and which are in his Hands, ſo as he may procure to his Subjects their Indemnity, and a ſuitable Reparation for the Violences exerciſed againſt them by the* Engliſh *Privateers, in deſpite of the Law of Nations, and notwithſtanding the formal Declarations repeated by the* Engliſh *Miniſtry: and whether the King has not a Right to indemnify his Subjects out of thoſe Capitals, ſeeing that Juſtice has been ſo long denied them, which they were ſo well grounded to demand?*

SECTION XIII.

Examination of the I^ſt Queſtion.

WHETHER the Engliſh *Privateers had a Right to ſtop the* Pruſſian *Veſſels on the high Seas, to ſearch them, and, notwithſtanding the Exhibition of their ſailing Orders, and Bills*

Bills of Lading, by which they proved they had no Contraband on Board, to carry them forcibly into the Ports of England?

A. It appears by the Appendix'd Piece marked A, that Eighteen *Pruſſian* Ships have been ſtopped by *Engliſh* Privateers, in a Manner equally unjuſtifiable and illegal, and that they were forcibly carried into *England.* This Procedure is viſibly contrary to the Law of Nature and of Nations; according to which, it ſtands a Principle univerſally acknowledged by all reaſonable Countries, that the Sea is in the Number of thoſe Things called *res nullius*, or of which Man cannot make himſelf Maſter.

§. 5. *Inſt. De rer. diviſ.*

If then no one can attribute to himſelf the Sovereignty and Property of the Sea, it naturally follows that the Uſe of it is common to all Men, and that no one has a Right to debar another of it.

L. 2. § 1. *ff. De rer. div.*
§ 1. *Inſt. eodem.*
L. 13. § *fin. ff. De injur.*
L. 3. § 1. *Ne quid in loco public.*
L. 13. *ff. Comm. præd.*

According to theſe Principles, founded upon Reaſon, all Powers have an equal Right to navigate freely, and to trade by Sea.

L. 4. § 1. *De rer. diviſ.*
§ 1. *Inſt. eodem.*
d. L. 13. § *fin.*
L. 1. § 1. *De acquir. rerum dominio.*
L. 2. § 9. *ff. Ne quid in loco public.*
L. 13. *ff. Commun. præd.*

SEC-

SECTION XIV.

WITHOUT however even having recourſe to the *Roman* Civilians (by whom the Law of Nature and Nations was perfectly underſtood) one might eaſily maintain this Propoſition by an infinite Number of Authorities and Examples.

Vid. Grot. in tractatu De mare libero.

BUT this would be ſuperfluous, ſince the *Engliſh* Nation itſelf has availed itſelf of it in ſeveral Circumſtances. When the *Spaniſh* Envoy *Mendoza* complained to Queen *Elizabeth*, that *Engliſh* Ships preſumed to trade in the *Indian* Seas, that Queen gave for Anſwer,

That ſhe ſaw no Reaſon, that could exclude her, or other Nations, from navigating to the Indies, *ſince ſhe did not acknowledge any Prerogative that* Spain *might claim to that Effect, and much leſs any Right in it to preſcribe Laws to thoſe who owed it no Obedience, or to debar them Trade. That the* Engliſh *navigated on the Ocean, the Uſe of which was like that of the Air, common to all Men, and which, by the very Nature of it, could not fall within the Poſſeſſion or Property of any one.*

SECTION XV.

IN Conſequence of this Principle, founded upon the Law of Nature and of Nations, the *Engliſh* Nation has, in ſeveral Conjunctures, in which their Ships have been ſtopped, ſearched, and ſeized, warmly proteſted againſt, and taxed ſuch Proceedings of being a manifeſt Violation of the Law of Nations.

THERE is no Doubt, but that the *Engliſh* Nation will recall to Mind the great Stir it made, when the King of *Sweden*, in a War againſt *Ruſſia*, laid an Embargo on all the *Engliſh* Veſſels, that were bound for the Ports of *Livonia*, and occaſioned thereby a conſiderable Prejudice to their Trade. Then it was they appealed loudly to the Laws of Nations.

ACCORDING

ACCORDING to which, they maintained, that it was allowable for the Subjects of *England* to trade with all States, who were, as to them, neutral, although they might be involved in War with other Powers, alſo neutral, as to them; in like Manner as the *Engliſh* permitted the Subjects of *Sweden* to navigate and trade with all other States, and all other Ports, that were neutral as to *Sweden*, although involved in War with *England*; which was evident, in this very Circumſtance, that they, at that Time, permitted the Subjects of *Sweden* to trade freely with *France* and *Spain*, which were, at that Time, actually in open War with *England*.

THIS Example is ſo much the more favourable to the Subjects of *Pruſſia*, in that thoſe *Swediſh* Veſſels were, for the moſt Part, loaded with Contraband, and that they carried Things to ſuch Lengths, as to convey even Ships of War to the Enemies.

SECTION XVI.

WHAT a long, bloody, and expenſive War has not *England* maintained againſt *Spain*, for the Defence of the Liberty of its Trade and Navigation, becauſe the *Spaniards* ſearched their Ships, in the *American* Seas, for Prevention of Contraband Trade?

IN the Declaration of War of the 30th of *October*, 1739, *England*, after a Deduction of its Grievances againſt *Spain*, thus explains itſelf:

THAT all theſe Grievances took their Riſe from *Spain* attributing to itſelf, againſt all Reaſon, the Right of ſtopping and ſearching the *Engliſh* Ships; a Pretenſion contrary to the Right of Navigation, which belonged equally to the *Engliſh*, as well as to the *Spaniards*, and conſequently contrary to the Law of Nations.

UPON this Foundation, *England*, in its above Declaration of War, taxes their Pretenſion with being ill-grounded, unjuſt, dan-

dangerous, ſo as to affect all the Powers of *Europe*; and, in the Memorial, which afterwards appeared on its Behalf, it is maintained, that *Spain* ought to content itſelf *with ſimply the Preſentation to be made by the* Engliſh *Ships of their uſual Clearances, and Bills of Lading*. And it is upon that Point, that to this Inſtant turn the Complaints of the *Britiſh* Nation againſt the *Spaniſh* Guard-Ships.

SECTION XVII.

THESE Principles evidently demonſtrate the Right of the *Pruſſian* Subjects, and carry the greater Force againſt the *Engliſh* Privateers, in that *England*, with regard to *Spain*, had its Hands tied up by ſeveral Treaties of Peace and Commerce with that Crown; whereas no ſuch Treaty having exiſted between *Pruſſia* and *England*, the Affair cannot, nor ought not to be diſcuſſed, but according to the Laws of Nations.

SECTION XVIII.

ALL that could be granted to the *Engliſh* Nation would extend to no more than *permitting its Privateers to inform themſelves from the neutral Ships they ſhould meet with at Sea, bound either to* Spain *or* France, *whether they had or not any Contraband on Board*, &c. But there was no Sort of Neceſſity for ſearching ſuch Ships, and yet leſs for carrying them forcibly into the Ports of *England*, and there detaining them whole Years. The Privateers then had no other Right beyond requiring the Exhibition of their uſual Clearances, Bills of Lading, or Certificates, whereby to diſcover, whether they carried any Contraband Articles.

FOR the Support of which Practice, it is here relied on the very Principles which *Great-Britain* itſelf eſtabliſhed in its Difference with *Spain*; and in Conſequence of which, it maintained, that *Spain* ought to have contented itſelf with the Exhibition of the uſual Clearances, and Certificates, to its Cruizers.

SECTION XIX.

AND as the Laws of Nations are chiefly eſtabliſhed by the Examples, and by the Treaties of the Maritime Powers, it is here appealed to the moſt celebrated Treaties concluded between the ſaid Powers, and in which it is agreed on all Sides to act in this Manner. Thus it is provided in the Treaties between *England* and *Holland* in the Years 1667 and 1668, Art. 20.

Du Mont. Corps Diplom. Vol. VII.

AND the Treaty of the Year 1674, in the fifth Article, ſtands expreſſed as follows,

WHEN a Dutch *Ship bound for an Enemy's Port, ſhall, on the High Sea, meet with* Engliſh *Ships, it ſhall bring to at a certain Diſtance, and the* Engliſh *Ship ſhall ſend its Boat, out of which two or three Men ſhall go on Board, and make the Captain or Maſter produce his uſual Clearances and Certificate, to ſatisfy whether there is any Contraband on Board.*

SECTION XX.

SOUND Reaſon dictates ſufficiently, that without this Precaution, and if it was allowable for Privateers to attack a neutral Ship with open Force, to break open and ſtave Trunks and Cheſts, to drag them violently away into the Ports of *England*, notwithſtanding the Proof by their Certificates of having no Contraband on Board, there is no ſuch Thing as forming to one's ſelf the Idea of a free Trade. And indeed what neutral Nation would run the Riſk of trading, if it was to foreſee that, after having recovered the Releaſe of its Ships, there was no Reparation to be expected for the Damages, Charges, or Inſolences they ſhould have undergone, and ſhould moreover ſee thoſe neutral Ships condemned to pay to the Privateers the Coſts of their Capture, &c. Can a Commerce thus liable be called a free one? If the *Pruſſian* Merchants were to have been obliged to carry on their Trade upon ſuch a Footing, the Loſs in all certainty would have out-balanced the Profit; and if the Wars had laſted longer, they

they muſt have renounced Common-Senſe, had they continued ſo ruinous a Commerce.

SECTION XXI.

THE *Miniſtry* has expreſsly declared, that the Freedom of Trade with regard to neutral Ships ſhould ſubſiſt *upon the ſame footing as in Time of Peace*, excepting only Warlike Stores. In Time of Peace Ships are not ſtopped in their Courſe, much leſs forced into the Ports of *England*.

SECTION XXII.

THE Conſequences naturally deducible from the above, are that the Subjects of *Pruſſia* have by no means been ſuffered to carry on a free Trade *as in Time of Peace*, notwithſtanding the Laws of Nature and Nations, and the poſitive Aſſurances given by the *Engliſh* Miniſtry: But that, on the contrary, the Trade of the ſaid Subjects has been ruined; and that, conſequently, the *Engliſh* Privateers are accountable for the Reparation of the Damages which they have cauſed to the Subjects of the King.

SECTION XXIII.

England cannot object to this Conſequence, ſince, as above remarked, itſelf has treated, as a Violation of the Laws of Nations, the Procedure of the *Spaniards*, when theſe, not contented with the Exhibition of the uſual Clearances and Certificates, have ſtretched their Office to the Search of the Ships themſelves.

See § XVI.

QUESTION II.

WHETHER the ſaid Engliſh *Privateers were warranted to ſtop, on the high Seas, the* Pruſſian *Veſſels, under a Pretext*, that there was Merchandize on board them, that belonged to the Enemies of the *Britiſh* Nation? *And whether they*

had a Right to carry them into their Ports, and thereby retard the Courſe of their Navigation.

SECTION XXIV.

ONE of the moſt crying Grievances of the *Pruſſian* Subjects conſiſts, in that their Ships loaded in *France*, were, on their Return Home, ſtopped on the High Seas, and carried by the *Engliſh* Privateers into the Ports of *England:* That, after being detained there a certain Time, they were, it is true, releaſed; but that the *French* Merchandize found on Board was confiſcated; or, at leaſt, it was exacted from the Crew, that it ſhould make Proof of the ſaid Merchandize being the Property of the *Pruſſian* Subjects; that it was not given them in Commiſſion by *French* Merchants, and that theſe had not charged themſelves with the Riſk, *&c.*

SECTION XXV.

THIS Conduct is not only contrary to the Laws of Nations, but alſo to all the Treaties that were ever concluded between Maritime Powers.

FIRST, Becauſe, if as without Doubt it is free for the Subjects of *Pruſſia*, not only according to the Laws of Nations, but according to the formal Acknowledgement of the *Engliſh* Miniſtry, to trade with *Spain* and *France*, it neceſſarily follows from thence, that the ſaid Traffic muſt be general, and might be carried on, either by Purchaſe, by Exchange, by taking *French* Goods upon Commiſſion, *&c.*

SECONDLY, By a Commerce then of this Nature, no Prejudice could be done to the *Engliſh* Nation, ſince with Regard to Ships upon their Return, and bound for neutral Ports, reaſonably ſpeaking, all Contraband Trade muſt be out of the Queſtion; which is the only Exception that could here take Place, either agreeable to the Law of Nations, or to the Declaration of the *Engliſh* Miniſtry.

THIRD-

THIRDLY, It is inconteſtable that Enemies, according to Reaſon, and even to the Law of Nations, are in Safety one from the other, when they meet in a neutral Place, and that conſequently one Enemy cannot attack another Enemy in ſuch a Place, nor ſeize any of his Effects. Now the *Pruſſian* Ships, had they been freighted with Effects belonging to the Enemies of *England*, are a neutral Place: Thence it follows, that it is all one, to carry off ſuch Effects, from ſuch neutral Ships, as to carry them off from a neutral Territory. This Point of the Law of Nations ſees itſelf confirmed by this remarkable Maxim, expreſsly eſtabliſhed in the Treaties between *England* and *Holland*, and between *England* and *France*; that *Free Ships render the Merchandize on Board free.*

FOURTHLY, It is proper to add here, that, conformably to the Declaration of Lord *Carteret*, the Trade of the *Pruſſian* Subjects *was to continue as free as in time of Peace:* Now, nobody can make Doubt, but that in Time of Peace it is allowed to every one to deal by Exchange, by Commiſſion, *&c.*

FIFTHLY, All the Treaties concluded between the Maritime Powers are, in this Point, perfectly agreeable to the Laws of Nations. The ſame will be found clearly ſtipulated in the 8th Article of the Treaty of 1667, between *England* and *Sweden.*

Du Mont Corps Diplom. Vol. VII. Page 37.

AND in the 8th Article of the Treaty 1674, above-cited, it is there expreſsly decided,

THAT the Effects of an Enemy, on Board of a neutral Ship, ſhould not be confiſcated.

The ſame Clauſe ſtands Word for Word repeated in the Treaty of Commerce of 1713, between *England* and *Holland*, and between *Holland* and *France.*

Du Mont. Vol. VIII. p. 345. § 17. & P. 377. § 17.

AND the Reaſon given for it, is, that already above-recited, to wit,

That

That Free Ships render the Merchandize on Board free. A Reaſon drawn from the Law of Nations.

SECTION XXVI.

THE King then ſees himſelf perfectly well grounded in his Exaction of a ſuitable Reparation of the Damages cauſed to his Subjects, by the unjuſt Procedure againſt, and Detainment of their Ships, without its concerning him to enquire whether the Goods had been given upon Commiſſion to neutral Places by *French* Merchants, or whether or no theſe had taken upon themſelves to run the Riſks.

QUESTION III.

WHETHER the ſaid Privateers had a Right to ſtop, on the High Seas, other Neutral Ships, ſuch as thoſe of Sweden, Holland, Denmark, Hamburgh, *&c.* N. B. *freighted, in the Whole, or in Part, by* Pruſſian *Subjects, to carry them into* England, *to detain them whole Years, and diſturb in this Manner the Trade of the* Pruſſian *Subjects?*

SECTION XXVII.

B. THE appendix'd Piece, mark'd Letter B, ſhews, that on the High Seas there were ſtopped 33 NEUTRAL SHIPS, in which the Subjects of *Pruſſia* had an Intereſt; and that the *Engliſh* Privateers, inſtead of contenting themſelves with the Exhibition of their uſual Clearances and Bills of Lading, made by the Captains, in Proof of their having no Contraband on Board, carried them into the Ports of *England*, there detained, at leaſt many of them, whole Years; and though they were at length releaſed, they were nevertheleſs condemned in Coſts of Capture to the Privateers.

THIS Procedure, which has diſturbed the Trade of the *Pruſſian* Subjects, is not only in Contradiction to the Laws of Nations, but diametrically oppoſite to the Tenor of the Declaration of the *Engliſh* Miniſtry.

IT

It is here preſuppoſed, that all Neutral Ships had the ſame Right as the *Pruſſian* ones; whence it follows, that it muſt be perfectly indifferent whether the *Pruſſians* loaded their Goods on *Pruſſian* Bottoms, or on Neutral ones.

SECTION XXVIII.

The *Engliſh* Miniſtry cauſed a general Aſſurance to be given to the Court of *Berlin*, that the Liberty of Trade ſhould ſubſiſt (*N. B.*) with regard to the Neutral Powers, on the ſame Footing as in *Time of Peace*, (excepting Warlike Stores.)

As therefore in Time of Peace the Subjects of *Pruſſia* uſed to load their Goods upon other Neutral Bottoms, without any Apprehenſion, unleſs they carried Contraband Articles, of their being to be carried into the Ports of *England*; they continued, *bonâ fide*, their Commerce upon the ſame Footing, in full Reliance on the Declaration of *England*, of which the King had cauſed them to be informed.

SECTION XXIX.

The ſaid Subjects of *Pruſſia* would never have loaded their Goods upon thoſe Ships, could they have foreſeen that, againſt the Laws of Nations, againſt the Principles acknowledged by *England* itſelf, and againſt the expreſs Declaration of its Miniſtry, theſe would have ſtopped all neutral Ships, whether they had Contraband Articles on Board, or not; that they would detain them whole Years in their Sea-ports, and releaſe them at length without any Indemnification, and with even condemning them in the Coſts of the Capture.

SECTION XXX.

Certain it is that the *Engliſh* Nation could not have deviſed a ſurer Expedient for giving the finiſhing Stroke to the Commerce of the *Pruſſian* Subjects, than to proceed againſt them in the Manner it has done; whence it follows, that theſe are well warranted to claim a Satisfaction proportionable to the Damages

Damages and Coſts that have been cauſed to them by their unjuſt Detainments.

QUESTION IV.

WHETHER the Sorts of Merchandize, loaden upon Pruſſian *Bottoms, or on Neutral ones, by the Subjects of* Pruſſia, *and which were confiſcated from them, in Virtue of the unjuſt Decrees given againſt them by the* Engliſh *Tribunals, were really Contraband?*

SECTION XXXI.

THE *Engliſh* Privateers having confiſcated upon three Ships, *Pruſſian* or Neuter, the Rye and Wood wherewith they were loaded (*See forward*, § 38.) makes naturally Room for the two following Queſtions:

Were the ſaid Goods Contraband or not?

And,

What is reputed Contraband according to the Law of Nations?

IT is an Axiom of the Law of Nations, that a War between two Powers cannot interrupt or hinder the Commerce of Neutral Powers with either the one or the other of thoſe Powers at War; neither can either of theſe prohibit to the Power remaining neuter, the Uſe of a free Trade, to which it ſtands entitled by the Law of Nations; and that, conſequently, the Commerce of all Sorts of Merchandize is regularly and implicitly held allowable.

SECTION XXXII.

THERE is in this Caſe one only Exception, and that is, when neutral Powers ſhould aſſume to carry, to one of the Parties at War, Stores of War, which might be of Prejudice to the other; and this is what they call Contraband.

SEC-

SECTION XXXIII.

THE celebrated *Grotius*, in his Treaty upon the Laws of War and Peace, in his Examination of this Queſtion, L. iii. C. i. §. 4. N. 2. diſtinguiſhing between thoſe Sorts of Merchandize, *that ſerve ſolely in War, and thoſe that ſerve both in War, and out of War*;

HE ranks the *firſt Sort* of Merchandize amongſt the Contraband; but as to the *laſt*, he conſtrues it ſuch in no other Caſe but when conveyed to Places under an actual Siege or Blockade.

SECTION XXXIV.

GREAT-BRITAIN has in all Times treated this Matter in this very Light, when aſked by neutral Powers to explain itſelf thereon.

WHEN the War was kindled between *Spain* and Queen *Elizabeth*, the Town of *Lubec*, deſiring to know what Security it might have for its Trade, and what Sorts of Merchandize it might be allowed to ſend to *Spain?* This Queen anſwered:

THAT whilſt they abſtained from ſending Arms, and other Implements of War, they were at Liberty to traffic thither in all other Sorts of Merchandize.

Seld. Mar. Clauſ. L. 2. Cap. 30. *p.* 433.

THE Sieur *Bonel*, *Swediſh* Commiſſary, received, in 1653, a like Anſwer to a like Queſtion, when the Parliament of *England* gave him to underſtand,

THAT in Warlike Stores excepted, they had no Objection to the Swedes *trading wherever they thought proper.*

Puff. Rer. Suec. L. 25. § 46.

SECTION XXXV.

THE *Engliſh* Miniſtry, in its Declaration to the Miniſter of *Pruſſia*, made uſe of the proper Terms of *Grotius*; and at the firſt Inſtance, declared, that *Warlike Stores alone* ſhould be reputed Contraband.

See § 2.

A DECLARATION which was afterwards more particularly repeated, and in the following Terms:

THAT there was not the leaſt Intention towards oppoſing any Obſtacles to the Commerce of the *Pruſſian* Subjects, provided they abſtained from conveying to the Enemies of the *Britiſh* Nation Warlike Stores (of which the ſpecific Articles are particularized in, *N. B.* all the Treaties of Commerce between the Maritime Powers) and Victualling Stores, to Places beſieged, or blockaded, *&c.* and that, for the reſt, the Liberty of Commerce was to ſubſiſt, with reſpect to the Neutral Powers, upon the ſame Footing as in Time of Peace.

See § 3.

THE *Engliſh* Miniſtry did not confine itſelf to this, but ſpecified, in Detail, all the Articles that were not Contraband, as *Grain, Wood, and all other Materials employed in the building of Ships*, Cordage, Sails, Flax, Hemp-ſeed, Linnens, *&c.*

SECTION XXXVI.

ALL the Treaties of Navigation are explicit in fixing the Definition of Contraband on the ſame Footing. Reference is here had to what has been ſaid upon this Subject in the fifth Section above, and to the Treaty of Commerce of 1674, concluded between *England* and *Holland*, there cited, and in which may be found, exactly particularized, what is Contraband, and what free Merchandize.

BOTH

Both theſe Sorts of Merchandize are alſo pointed out in the ſame Terms Section 19 and 20, of the Treaty of Commerce concluded between *England* and *Holland* in 1715.

Du Mont. Vol. VIII. *p.* 348.

SECTION XXXVII.

There are to be found Treaties anterior to theſe two juſt cited, in which may be ſeen particularized upon the ſame Footing, what it is that does not come within the Deſcription of Contraband.

Thus it is that in the third Section of the Treaty of Commerce between *Sweden* and *Holland*, nothing bears the Appellation of Contraband but *Warlike Stores alone*; and that in the fourth Section, Money, *all Sorts of Grain*, *Salt*, Wine, Oil, Sails, Cloths, *Hemp*, all *Sorts of Timber*, and every Thing ſerviceable towards *the building of Ships*, Anchors, *&c.* are ranked amongſt the Sorts of free Merchandize.

Du Mont, *Corps Diplom. Vol.* VII. *Part* I. *p.* 67.

SECTION XXXVIII.

It is enough to caſt one's Eyes over the Sorts of Merchandize that were confiſcated in *England* from the *Pruſſian* Subjects, to convince one's ſelf, that there is not any of them, which, according to the Laws of Nations, according to all Treaties of Commerce, and, *N.B. N.B.* according to the Declaration of the *Engliſh* Miniſtry, could paſs for Contraband.

For out of a *Pruſſian* Ship, called the *Twins*, they confiſcated a *Cargo of Wood*; out of a *Dutch* Ship, the *Three Siſters*, another *Cargo of Wood*; and out of a *Pruſſian* Ship, the *Golden Sun*, a *Cargo of Rye*; all Articles of Merchandize expreſsly excepted out of the Contraband by the Declaration of the *Engliſh* Miniſtry.

SECTION XXXIX.

If the *Engliſh* Miniſtry had, from the Beginning, declared, that it conſidered theſe Kinds of Merchandize as Contraband, the King would not have failed of warning his Subjects not to riſk the ſending them, till the Matter had been ſettled with the Court of *England*; but the *Engliſh* Miniſtry having poſitively declared, that it looked upon the ſaid Sorts of Merchandize as free ones; and the King having communicated this Declaration to his Subjects, the ſaid Miniſtry can in no wiſe juſtify the Procedure of their Privateers.

SECTION XL.

Vainly does the preſent *Engliſh* Miniſtry ſeek to juſtify the Procedure of their Privateers, by a Reaſon, which equally ſhocks common Senſe, and the Practice received amongſt all well-ordered Nations.

It is ſaid, that the preceding Miniſtry had not Authority, of its own Head, to make ſuch Declarations, and to determine, contrary to the Diſpoſition of the Laws of the Country, what was Contraband, or what was not ſo.

SECTION XLI.

It is appealed to the whole Univerſe, whether it is allowable, between Power and Power, to make Uſe of ſuch Subterfuges?

First, It is well known, that, as the Cuſtom is, Princes never treat with the foreign Envoys, but through Means of their Miniſters. There is then a Neceſſity of giving Credit to whatever theſe declare, in the Name of their Maſters, to the Envoys who treat with them. But there is yet a greater Neceſſity for it, when thoſe Miniſters refuſe, as upon this Occaſion, to explain themſelves in Writing.

Second-

SECONDLY, Moreover, the aboveſaid Declaration was not made by one Miniſter only, but by two ſucceſſive ones, at different Times, and at both the Times, in the Name of his *Britannic* Majeſty. Can it then be preſum'd, that two Miniſters, whoſe Integrity and Patriot Zeal are ſo univerſally acknowledged, could forget themſelves to ſuch a Point, as to declare, in the Name of their Maſter, a Thing upon which he had not given them his Orders,——to deceive, in ſo unworthy a Manner, a foreign Allied Power, and to lay ſuch dangerous Snares for the Subjects of that Power?

THIRDLY, Beſides, it has been ſhewn, that the ſaid Miniſters granted nothing, but what, according to the Laws of Nations, and to all the Treaties between the Maritime Powers, is ever ranked amongſt the Articles of free Merchandize.

SECTION XLII.

TRUE it is, that it has been obſerved, from certain Decrees which have been iſſued from the *Engliſh* Tribunals, that they had confiſcated the Cargoes of ſome neutral Ships, upon which *Pruſſian* Goods had been laden; and it ſhould ſeem at the firſt Glance, that, in ſuch a Caſe, the Subjects of *Pruſſia* had no Right to exact Reparation of Damages from any but the Maſters or Owners of the Ship.

THIS is not denied; and it is even agreed to, that if the neutral Ships had carried on any Contraband Trade, the Subjects of *Pruſſia* could not, with Juſtice, have ſought elſewhere for their Indemnification. But as they ſolemnly deny, as do likewiſe the Maſters of the ſaid Ships, that there was any Contraband in the Caſe, and that by the Decrees themſelves of the *Engliſh* Tribunals, it clearly appears, that the Goods confiſcated were in no wiſe Contraband, this Pretext can be of no Service to the Privateers, nor exempt them from repairing the Damages they have cauſed.

SEC-

SECTION XLIII.

It ſtands then demonſtrated, that the Law of Nations has been manifeſtly violated, in direct Contravention too to the Aſſurances given by the *Engliſh* Miniſtry, when thoſe Neutral Ships were ſtopt, which carried no Contraband Articles, and whereby a very conſiderable Damage has been occaſioned to the *Pruſſian* Subjects.

QUESTION V.

WHETHER the Engliſh *Miniſtry had a Right to refer to the Tribunal of Marine, eſtabliſhed in* England, *the Deciſion of Differences of the Nature of thoſe examined in the preceding Queſtions, when thoſe Differences are in Agitation between two free Powers, and to want to oblige the aggrieved Power, who demands Satisfaction, to abide by the Deciſions of ſuch a Tribunal?*

SECTION XLIV.

The *Engliſh* Miniſtry, in almoſt all the Caſes in which the Miniſters of *Pruſſia* made Repreſentations to them upon the Depredations and Inſolences committed upon the High Seas againſt the Subjects of *Pruſſia*, has declared to them,

That the King of *England* had eſtabliſhed in his Dominions Courts of Judicature, expreſsly to examine and decide, according to the Laws of *England*, all the Prizes upon which there was any Conteſt, and to adminiſter Juſtice to every one; which Courts would not fail of rendering Juſtice to the Subjects of *Pruſſia*, if their Complaints were found well-grounded: That, moreover, neither the King of *Great-Britain*, nor his Miniſtry, could alter or depart from the Practice or Conſtitution of Government eſtabliſhed in that Country.

SEC-

SECTION XLV.

Upon which on this Occaſion one cannot avoid aſking the Queſtion, By what Right is it that the *Engliſh* Miniſtry arrogates to itſelf that of taking any Cognizance at all of ſuch Cauſes, and of exerciſing a Kind of Juriſdiction over a neutral Sovereign, over his Subjects, and his Ships, ſtopt in a Place which does not belong to the Dominion of *England*, and in which the *Pruſſian* Ships have as much Right as the *Engliſh* ones?

SECTION XLVI.

With what an Eye would *England* have beheld the King (of *Pruſſia*) in the laſt War of the North, ſeize indifferently all the *Engliſh* Ships trading to the North, ſtop them on the High Seas, ſearch, and carry them into his Ports, afterwards refer to the Deciſion of his College of Admiralty, whether they were good Prizes or not; releaſe them, without any Amends, after a Proceſs of two or three Years ſtanding, and condemn them beſides to the Payment of from 2, 3, to 4000 Crowns, for Charges of Capture, and Coſts of Suit?

SECTION XLVII.

When two Powers have any Difference between them, neither of them can, on either Side, appeal to the Laws of the Country, becauſe one of the two Parties does not acknowledge them. The Affair then muſt be treated in the Way of Negotiation from Court to Court, and the Difference can only be decided with the Conſent of both Parties, according to the Laws of Nations, or by the Means founded thereon.

SECTION XLVIII.

It would however have been extremely indifferent to the King, which of the two it had been, the *Engliſh* Miniſtry, or the Tribunals of that Nation, that ſhould have rendered Juſtice to his Subjects: But as thoſe Tribunals, contrary to the Laws of Nature and Nations, have not procured to the ſaid *Pruſſian* Subjects any Reparation, it is to be believed, that the *Engliſh* Miniſtry is too reaſonable, not to judge from itſelf, that the King

King is, on his Part, well-grounded in his Refuſal to acknowledge the Juriſdiction of the ſaid Tribunals to be a competent one, much leſs to ſubmit himſelf to their unjuſt Deciſions.

SECTION XLIX.

And as the *Engliſh* Miniſters have, as often as Repreſentations have been made to them in the Name of the King, always obſtinately ſtuck to their Reference of theſe Sort of Affairs to the Deciſion of their Tribunals, and of their Laws; his *Pruſſian* Majeſty, enjoying, as he does, the ſame Rights and Prerogatives as his *Britannic* Majeſty, has ſeen himſelf thereby conſtrained to commit, in his own Dominions, the Examination of the Grievances of his Subjects to his proper Tribunals. To this End the King has eſtabliſhed a Commiſſion, compoſed of Counſellors verſed in the Affairs of Juſtice, as well as in thoſe of Commerce, with Charge, under the Direction of four of his Miniſters, to examine the Grievances of his Subjects, according to the univerſally-received Rights and Laws of Nations; and to ſtate in Conſcience, and according to their Duty, the exact nett Sum to which the Damages of his Subjects may amount.

SECTION L.

This is then what the ſaid Commiſſion has effectually executed. The Commiſſioners have exacted legal Proofs of the Liquidation of every Claim of Coſts: They have moderated, in an equitable Manner, thoſe Articles which appeared to be overcharged: They have rejected the Pretenſions of thoſe who could not verify them in Form, and conſequently they have acted in every Thing, and rendered Juſtice, without the leaſt Reſpect to Perſons, and with the greateſt Impartiality.

QUESTION VI.

WHETHER, in fine, on the one Hand, the King is not fully juſtifiable, in his giving Way to the Attachment which his Subjects have requeſted him to lay on the Engliſh *Capital Funds, ſtipulated by the Peace-Treaties of* Breſlau *and* Dreſden, *and which are in his Hands, ſo as he may procure*

procure to his Subjects their Indemnity, and a ſuitable Reparation for the Violences exerciſed againſt them by the Engliſh *Privateers, in Deſpite of the Law of Nations, and notwithſtanding the formal Declarations repeated by the* Engliſh *Miniſtry: And whether the King has not a Right to indemnify his Subjects out of thoſe Capitals, ſeeing that Juſtice has been ſo long denied them, which they were ſo well grounded to demand?*

SECTION LI.

It has been proved in the Premiſſes, that the Subjects of the King had legal Pretenſions to form againſt the *Engliſh* Privateers. It has been ſhewn too, that ſince the Year 1745, to this Inſtant, it has not been poſſible to obtain thereon any Satisfaction from the *Engliſh* Miniſtry; and it has been juſt now obſerved, that the King had ordered a Commiſſion, eſtabliſhed in his Dominions, to liquidate the exact Amount of the ſaid Pretenſion, which, *N. B.* is found to be 194,725 Crowns, 14 Gr. and 5 Deniers, incluſive of the Intereſt until the 10th of *July*, 1752. There remains no more then, than to examine the Means by which may be procured to the *Pruſſian* Subjects the Satisfaction for, and Indemnity of their Loſſes.

SECTION LII.

It is a Rule founded both upon Reaſon, and upon the Law of Nations, that when a Sovereign denies to the Subjects of another Sovereign that Juſtice which this laſt has required, and ſolicited of him to render to them; or when he does not do them due Juſtice, as well that Sovereign as his Subjects are anſwerable for it, in their own ſpecial and perſonal Name.

Grot. De Jure Belli & Pacis, L. iii. C. 2. § 2. "It has "been eſtabliſhed by the Law of Nations, that all the "Properties of the Subjects of a State ſhall be like as "mortgaged for what the State, or the Head of the State, "may owe directly, and upon their own Account, or for "ſo much as, for want of rendering due Juſtice, they may "have made themſelves liable for the Debt of others."

Grot. De Jur. Bell. & Pac. L. iii. C. 13. § 2. n. 2. " Not " only the Eſtate of the Debtor is, as it were, mortgaged " to the Creditor, but alſo what belongs to his Subjects, " who are implicitly anſwerable for the Debt."

Grot. L. iii. C. 2. § 5 and 7. " In ſuch caſe one may ſeize " on the Perſons, or the perſonal Effects, of the Subjects " of that Sovereign who refuſes to render Juſtice. It is " true this is not authorized by the Law of Nature, but " Cuſtom has almoſt every where eſtabliſhed the Practice " of it."

HERE he alledges ſundry Examples from Antiquity.

SECTION LIII.

THIS Principle of the Law of Nations is founded upon Natural Reaſon, becauſe the Subject are implicitly held to approve the Acts of their Sovereign, and to ſubſcribe to his Judgment; whence it naturally follows, that they are anſwerable for it, and that, when all other Means are wanting, it is to their perſonal Property that Recourſe muſt be had.

SECTION LIV.

Now, ſince the King happens to have in his Hands certain Capital-Funds belonging to *Engliſh* Subjects, and of which Payment is due to them, in Diſcharge of *Sileſia*, no one can diſapprove, that, in Purſuance of the Law of Nations, and upon the Inſtances made by his Subjects, his Majeſty ſhould attach thoſe Funds, and employ them in their Indemnification.

SECTION LV.

THE *Engliſh* Miniſtry has ſo much the leſs Room to exclaim upon ſo moderate a Meaſure being preferably taken, ſince themſelves, in a ſimilar Caſe, and before having declared War againſt *Spain*, purſued it for ſeveral Years together.

SEC-

SECTION LVI.

WITH Regret it is, that the King ſees himſelf under a Neceſſity to come to this Extremity, of which the Conſequences fall upon innocent Members of a Nation, for which he has ever had all imaginable Regard: An Extremity, to which he would never have had recourſe, if he had had other Means of procuring Satisfaction to his Subjects.

SECTION LVII.

THE King, in acting thus, purely follows the Rules dictated by the moſt correct Juſtice. He cannot, without being wanting to his Duties of a Sovereign, and to his Honour, refuſe to protect effectually his Subjects, who had not traded on the Footing they have done, but for their confiding in the Declaration, which had for its Foundation the Word paſſed by the *Engliſh* Miniſters.

SECTION LVIII.

THE *Engliſh* Subjects (who are the moſt intereſted in this Affair) will perhaps find means, by Help of the Parliament, to inſpire the *Engliſh* Miniſtry with more equitable Sentiments, or to compel the Privateers to the real Payment of the Sums liquidated; for which they are accountable to the *Pruſſian* Subjects; to which Effect thoſe Subjects, from this Inſtant, make over to the Stock-holders in the *Silęſia*-Loan all the Demands they have on the ſaid Privateers.

SECTION LIX.

How the *Engliſh* Miniſtry underſtands it, is paſt all Comprehenſion, whilſt they pretend that *England* would find itſelf diſengaged from the Guaranty of *Sileſia* from that Moment, that the Payment of thoſe Funds (guaranteed to the *Engliſh* Subjects by the Treaties of Peace of *Breſlau* and *Dreſden*, and in regard to which only that Guarantee of *Sileſia* had been granted) ſhould be interrupted. It ſeems, that in the Caſe as it now ſtands, the

Engliſh Miniſtry has afreſh loſt Sight of the Law of Nations; for neither the preceding Peace, nor the Motive upon which that Peace was concluded, are at all here concerned; but the Matter in Queſtion is a *new* Offence, committed after the Concluſion of the Peace, by *Engliſh* Subjects, againſt thoſe of the King; and it is this *new* Injury that engages the King to make uſe of Repriſals, towards obtaining Satisfaction for it.

SECTION LX.

It is clearly Matter of Fact, that it was not till after the Peace of *Breſlau*, of 1742, and that of *Dreſden* 1745, confirmative of the precedent one, (by which Treaties the King engaged to pay off to *Engliſh* Subjects more than one Million of Mortgage upon *Sileſia*; and on the other Part, the King of *Great Britain*, as being comprehended in the ſaid Peace, took upon himſelf to be a Guarantee of the ſaid Treaty) It was only, I ſay, ſince that Peace, that the *Engliſh* Privateers began, notwithſtanding the Laws of Nations, and the poſitive Aſſurances of the Miniſtry of that Nation, to inſult as well the *Pruſſian* Ships, as the neutral ones upon which the *Pruſſians* had laden permittable Merchandize, when they pillaged ſome, and forcibly dragged others into the Ports of *England*; whence, after having detained them whole Years, they releaſed them at length, without making them any Satisfaction for the Damages and Expences their Detainment had cauſed them, and with condemning them even in the Coſts of Capture.

SECTION LXI.

The Point then in Queſtion here is a *new* Offence, and which does not draw its Origin from the preceding War, nor has any Connection with it, but which purely of itſelf alone requires a *new* Reparation.

SECTION LXII.

The King, towards obtaining Reparation for this new Offence, is authorized by the Law of Nations, to have recourſe to the Funds

Funds of the *Engliſh* Subjects, which he happens to have in his Hands, ſo long as his Subjects ſhall not be indemnified.

See above, §. 52, 53.

SECTION LXIII.

THE preceding Peace does not receive any Attaint thereby, ſince, according to the Laws of Nations, the Reparation of a new Offence may be proſecuted (*ſalva pace*) without Interruption of a Peace.

SECTION LXIV.

THE illuſtrious *Grotius* clearly decides this Queſtion, by a Principle founded upon Natural Reaſon.

" IT is a Queſtion (ſays he) that occurs every Day, and is " often debated, when it is that a Peace may be looked upon " as broken; for it is one Thing, *NB.* to furniſh a new Subject " for War by a new Offence, and another Thing to break a " Peace."

HE there brings in an Example parallel to the Caſe here examined.

" IF it happens that, after a Peace concluded, one of the " contracting Parties commits Violence upon the Subjects of the " other, and conſequently *offends that other afreſh*, the Peace " does not for all that ceaſe to ſubſiſt, but the Party offended " can, *NB. NB. ſalva pace*, without violating that Peace, re- " commence War upon this new Motive."

Grot. De Jure Bell. & Pac. L. iii. c. 20. § 28 & 32. And c. 20. § 32. and § 33, n. 3.

SECTION LXV.

IF then a Peace, concluded between two Parties at War, ſubſiſts even after that one of the contracting Parties has ſuffered new Acts of Hoſtility on the Part of the other, with how much more cogent a Reaſon is not one to look upon that Peace as ſubſiſting,

ſubſiſting, when it is only the Mediator and Guarantee of that Peace, who, by a new Injury, gives Room to one of the contracting Parties, to lay an Attachment upon certain Things ſtipulated in that Peace, until he ſhall have obtained Satisfaction for this new Injury.

SECTION LXVI.

But, ſhould any take it into their Heads to maintain, againſt all Reaſon, that at leaſt ſuch an Attachment was to annul the Guarantee promiſed in the Treaties of *Breſlau* and *Dreſden*, nevertheleſs that, which is ſtipulated in the 22d Article of the Peace of *Aix-la-Chapelle*, of the 18th of *October*, 1748, would ſubſiſt always in its full Force. In all Events, the King would find himſelf equally diſengaged on his Side from the Guarantee given by him, with regard to the Succeſſion of the reigning Family in *England*, and of that of the Electoral States of *Hanover*.

SECTION LXVII.

It is then clear, from all the foregoing, that, notwithſtanding the Attachment laid upon the *Engliſh* Funds in the Mortgage of *Sileſia*; the Peace of *Breſlau*, and, conſequently, the Guarantee of the King of *Great-Britain*, and that of *England*, which is comprehended in it, ſubſiſt entire: A Guarantee, which the King, if Occaſion ſhould offer, will very well know how to aſſert effectually in its proper Seaſon.

Letter

Letter A.

SPECIFICATION

OF THE

PRUSSIAN SHIPS,

TAKEN ON THE HIGH SEAS,

Againſt the Rules eſtabliſhed by the Law of Nations, unjuſtly detained, and afterwards releaſed by the *Engliſh* Marine, during the laſt War: And the Captures and Detainments whereof have cauſed Loſſes and Damages to the Subjects of His *Pruſſian* Majeſty, either for the Ships themſelves, or for the Effects and Merchandize laden upon them.

Number of Ships	*Names of the Ships and Captains.*	*Names of the* Engliſh *Privateers who took them.*	*Voyages in which the Capture was made*	*Date of the Capture, and Time of Detainment.*	*Names of the* Pruſſian *Subjects who ſuffered Damage thereby*	*Upon what Account, and of what Sorts of Merchandize*
1.	The Frederick Friendſhip, Capt. Sprenger	The Poſtilion of Topſham, C. John Morgan	From Bourdeaux to Stetin	Taken April 16, 1748, till May 1, 1748	Tornick and Pingel of Stetin	Account of Detainment of the Ship
2.	The Twins, Capt. Kruth	The Prince Frederick, Capt. Norris	From Stetin to Port L'Orient or Breſt	Taken Auguſt 12, 1747, detained 10 Months	Vanſelow of Stetin	Account of Detainment of the Ship
3.	The Anne Elizabeth, Capt. Daniel Shultz	1. The Salamander, Capt. Henry Staffield 2. The Dolphin, Capt. Henry Pierce	From France to Stetin	Taken Jan. 7, 1748, detained 6 Months	1. Shultz of Stetin 2. The Widow Schroeder	1. For a Cargo of Wine and Cheſnuts 2. Account of the Ship itſelf
4.	The Catherine Chriſtina, Capt. Frederick Berend	The Proſperous, Capt. Solomon Courier	From Bourdeaux to Stetin	Taken April 5, 1748, detained 4 Days	Barthold of Stetin	Account of Detainment of the Ship

Number of Ships	*Names of the Ships and Captains*	*Names of the* Engliſh *Privateers who took them*	*Voyages in which the Capture was made*	*Date of the Capture and Time of Detainment*	*Names of the* Pruſſian *Subjects who ſuffered Damage thereby*	*Upon what Account, and of what Sorts of Merchandize*
5.	The Dame Juliana, Capt. Martin Preſt	The Prince of Orange, Capt John Stevenſon	From Leghorn to Amſterdam	Taken Jan. 20, 1748, detained 5 Months	Barthold of Stetin	Account of Detainment of the Ship
6.	Frederick II. K. of Pruſſia, Capt. Chriſtian Shultze	The Endeavour. Capt. Robert Crowſewall	From Bourdeaux to Koniſberg	Taken April 4, 1748, detained 4 Months	1. Saturgus of Kon. 2. Biſhoff and Maas of Konigſberg 3. Sherres of Kon.	1. Acc. Wines and Brandy lad. thereon 2. Acc. Det. of Ship 3. Account of Wine
7.	The Ship Good-Wind, Capt. Michael Jurianzen	Capt. Abraham Broxell	From Morlaix to Rotterdam	Taken April 5, 1748, detained 3 Months	Dickman and Son of Konigſberg	Account of Detainment of the Ship
8.	The Golden Sun, Capt. Jacob Rider	The Sackville, Capt. Peter Wood	From Konigſberg to Bourdeaux	Taken Dec. 29, 1747, detained 5 Months	The Widow of Shurt Liewes of Konigſberg	Account of Detainment of the Ship
9.	The De Daageroud, Capt. Martin Sperwien	The Endeavour, Capt. Robert Crouſewall	From Rotterdam to Bayonne.	Taken March 26, 1748, detained 8 Months	The Widow of Shurt Liewes of Konigſberg	Account of Detainment of the ſaid Ship
10.	The Frederick II. King of Pruſſia, Capt. Chriſtian Shultz	The Eagle, Capt. John Baſeley	From Konigſberg to Bourdeaux	Taken Nov. 16, 1746, detained till July 17, 1747	Biſchoff and Maas of Konigſberg	Account of the Ship itſelf
11.	The Golden Eagle, Capt. Onne Arends	The Prince of Orange, Capt. John Stevenſon	From Dunkirk	Taken July 24, 1747, detained 4 ½ Months	Onne Arends of Eaſt Friezeland	Account of Detainment of the ſaid Ship
12.	The Two Brothers, Capt. Jon. Hallen	The York, Capt. Gravener The Saltaſh, Capt. John Knight	From Rotterdam to Roan	Taken April 16, 1748, detained 4 Months	The Widow of John Hallen of Eaſt Friezeland	Account of Detainment of the ſaid Ship
13.	The Young Andrew, Capt. Henry Barkhorn	The Mary Galley, Capt. Peter Oliver	From Dublin to France	Taken Sept. 9, 1747, detained 8 ½ Months	Eſpanhiac and Cabrit of Konigſberg	Account of the Ship and a Lading of Turf

Num

Number of Ships	*Names of the Ships and Captains*	*Names of the* Engliſh *Privateers who took them*	*Voyages in which the Capture was made*	*Date of the Capture, and Time of Detainment*	*Names of the* Pruſſian *Subjects who have ſuffered Damage thereby*	*Upon what Account, and of what Sorts of Merchandize.*
14.	The Dorothy Sophia, Capt. Peter Kettelhut	1. The Eagle, Capt. Batzely 2. The York, Capt. Gravener	From Bourdeaux to Rotterdam	Taken Dec. 10, 1745, detained till Auguſt 12, 1746	Löper, Privy Counſellor, and Sherenberg, Counſellor of Commerce at Stetin	Account of Detainment of the Ship
15.	The Two Brothers, Capt. Auguſtine Auguſtinus	The Kingfiſher, Capt. William Salter Willet	From Rotterdam to Oſtend	Taken July 26, 1747, detained till Jan. 27, 1748	Auguſtin Auguſtinus of Eaſt Frizeland	Account of Detainment of the Ship
16.	The St. John, Capt. John Groſe	1. The Prince of Orange 2. The King of Sardinia, Capt. Torman	1. From Leghorn to Rotterdam 2. From Bayonne to Rotterdam	1. Taken Dec. 11, 1747, till Dec. 20, 1747 2. Taken April 30, 1748, till May 29, 1748	Jon Frederick Peters of Stetin	Account of Detainment of the Ship
17.	The Young Tobias, Capt. Paul Otto	The Corrival, Capt. John Milton	From Bourdeaux to Dantzick	Taken May 15, 1748, detained 7 Days	Sherenberg, Counſellor of Commerce Kretchmar, Merchant, Paul Otto, Captain of the Ship, and Gohr of Stetin	Account of Detainment of the Ship
18.	The Little David, Capt. Michael Bughdall	The Hawk, Capt. Bulkeley The Warren Galley, Capt. Ryan Brown	From Bourdeaux to Dunkirk	Taken May 17, 1748, detained till Sept. 27, 1748	Splittgerber and Daun of Berlin	Account of Detainment of the Ship, and of its Lading of Wine and Brandy

Letter B.

SPECIFICATION

OF THE

NEUTRAL SHIPS,

Taken, and unjuſtly detained, againſt all the Laws of Nations, by the *Engliſh* Marine, and afterwards releaſed, during the laſt War.

And of which the Capture and Detainments have occaſioned Loſſes and Damages to the Subjects of His Majeſty the King of *Pruſſia*, for the Merchandize with which they were laden, and which were detained in *England*, although at length releaſed.

Number of Ships	*Names of the Ships and Captains*	*Names of the* Engliſh *Privateers who took them*	*Voyages in which the Capture was made*	*Date of the Capture, and Time of Detainment*	*Names of the* Pruſſian *Subjects who ſuffered Damage thereby*	*Upon what Account, and of what Sorts of Merchandize*
1.	A Dane, the Cecilia, Capt. Bois Swenſen	The Cheſterfield, Capt. Samuel Gilbeck	From Ceüta to Altena	Taken April 22, 1748, detained till June 11, 1748	Palmir and Le Cocq of Berlin	For a Cargo of Wine
2.	A Swede, the Nahring, Capt. Chriſtian Tiedeman	The Cumberland, Capt. Henry Cooper	From Rochelle to Bourdeaux	Taken Oct. 13, 1747, detained 6 ½ Months	1. Le Cocq of Berlin 2. The Schwartz Brothers of Magdeburgh 3. Sandrat and Hammel of Magdeburgh 4. Meurn of Berlin	1. For 3 Barrels o Indigo 2. For 2 Barrels o Indigo 3. For Indigo, Sugar, and Orleanc 4. For Indigo

Numbe

Num-er of hips.	*Names of the Ships and Captains*	*Names of the* Engliſh *Privateers who took them*	*Voyages in which the Capture was made*	*Date of the Capture, and Time of Detainment*	*Names of the* Pruſſian *Subjects who ſuffered Damage thereby*	*Upon what Account, and of what Sorts of Merchandize*
3.	The Lady Jane, Capt. Joachim Peyn	The Fortune, Capt. Gilbert Chain	From Hamborough to Cadiz	Taken March 17, 1747, detained 6 Months	1. Mentzel of Hirſchberg	1. For 3 Bales of Linnens
					2. The Widow of John Martin Gottfrid, and her Son-in-law, of Hirſchberg	2. For Linnens
					3. The Widow of Buchs and Son, of Hirſchberg	3. For ditto
					4. Splittgerber and Daun of Berlin	4. For ditto
4.	A Swede, the Carlſhaven Werft, or Carlſhaven Dock, Capt John Holm	The Lilly, Capt. Thomas Knowles	From Hamborough to Cadiz	Taken Dec. 24, 1747, detained 1 Year	1. Mentzel of Hirſchberg	1. For 7 Cheſts of Linnens
					2. The Widow of John Martin Gottfried, and Son in-law, of Hirſchberg	2. For Linnens
					3. The Widow and Son of Godfrey Glatfey of Hirſchberg	3. For ditto
					4. Hartman of Hirſchberg	4. For ditto
					5. Schober of Hirſchberg	5. For ditto
					6. Buttner of Schmiedeberg	6. For ditto
					7. Splittgerber and Daun of Berlin	7. For Flax and Tin
5.	A Hamburgher, the Anne Elizabeth, Capt. Chriſtian Mau	The Carliſle, Capt. William Owen	From Hamborough to Cadiz	Taken Sept. 10, 1746, detained 6½ Months	1. The Widow of John Martin Gottfried, and Son-in-law, of Hirſchberg	1. For Linnens
					2. The Widow and Son of Godfrey Glatfey of Hirſchberg	2. For ditto
					3. John Hartmann of Hirſchberg	3. For ditto
					4. Splittgerber and Daun	4. For ditto

Num-

Number of Ships	*Names of the Ships and Captains*	*Names of the* Engliſh *Privateers who took them*	*Voyages in which the Capture was made*	*Date of the Capture and Time of Detainment*	*Names of the* Pruſſian *Subjects who ſuffered Damage thereby*	*Upon what Account, and of what Sorts of Merchandize*
6.	A Swede, Guſtavus the Prince Royal, Capt. Barthold Muhl	The Anſon, Capt. Benjamin Goodwin	From Hamborough to Cadiz.	Taken October 27, 1747, detained 15 Months	1. The Widow of John Martin Gotfried, and Son-in-law, of Hirſchberg	1. For Linnens
					2. The Widow and Son of Godfrey Glatfey of Hirſchberg	2. For ditto
					3. Hartmann of Hirſchberg	3. For ditto
					4. Tietze of Hirſchberg	4. For ditto
					5. Cuenz of Hirſchberg	5. For ditto
					6. Carpzow of Hirſchberg	6. For ditto
					7. Splittberger and Daun of Berlin	7. For Flax
7.	A Dane, the Young Benjamin, Capt. Henry Neuſchilling	The Proſperous, Capt. Solomon Courier	From Hamborough to Cadiz	Taken June 2, 1747, detained 6 Months	1. The Widow and Son of Godfrey Glatfey of Hirſchberg	1. For Linnen
					2. Chriſtop. Cuentz of Hirſchberg	2. For ditto
8.	The Prince Frederick, Capt. John Hartmann		From Hamborough to Bilboa and Bayonne	Taken May 28, 1748, detained 1 ½ Month	The Widow and Son of Godfrey Glatfey of Hirſchberg	For Linnens
9.	A Hollander, the Mary Joſeph, Capt. Jeurier Rouge	The Anſon, Capt. Benjamin Goodwin	From Hamborough to Cadiz	Taken Sept. 21, 1747, detained 10 Months	John Godfrey Bultner of Schmiedeberg	For Linnens
10.	A Hamburgher, the Union, Capt. John Struckmann	The Culloden, Capt. Abraham Boxel	From Bourdeaux to Hamborough	Taken Auguſt 9, 1747, detained 3 Months	1. The Schwartz Brothers of Magdeburgh	1. For Coffee
					2. Sandrat and Hummel of Magdeburgh	2. For Sugar and Coffee

Num

Number of Ships	Names of the Ships and Captains	Names of the Engliſh Privateers who took them.	Voyages in which the Capture was made	Date of the Capture and Time of Detainment	Names of the Pruſſian Subjects who ſuffered Damage thereby	Upon what Account, and what Sorts of Merchandize
11.	A Hamburgher, the Neptune Capt. Sander Heeren	The Hardwick, Capt. James Samian	From Nantz to Hamborough	Taken Auguſt 10, 1747, detained 5 Months	1. The Schwarts Brothers of Magdeburgh 2. Sandrat and Hummel of Magdeburgh	1. For Coffee 2. For Coffee, Sugar and Pernambuco
12.	A Flemburgher, the St. Paul, Capt. Jent Hinrichſen	The Cheſterfield, Capt. Samuel Gilbeck	From Nantz to Hamborough	Taken April 5 1748, detained 1 ½ Month	The Schwarts Brothers of Magdeburgh	For Coffee
13.	The Crown, Capt. Peter Claſſen	The Prince of Orange, Capt. John Topmann	From Nantz to Hamborough	Taken Oct. 25, 1747, detained till Jan. 2, 1748	1. Eberſpach of Berlin 2. The Sons of Feyeriſen, and Siebert of Glogaw	1. For Indigo 2. For ditto
14.	The Lady Catherine, Capt. Wilke deVries	The Tartar, Capt. Thomas Spicer	From Rochelle to Altena	Taken April 5, 1748, detained 7 Months	1. Spatzier and Engelhart of Berlin 2. The Widow Reyne of Berlin 3 Matthis of Berlin	1. For Brandy 2. For ditto 3. For ditto
15.	The Concord, Capt. Claes Eichels	The George, Capt. William Freebairne	From Rochelle to Hamborough	Taken Nov. 21, 1747, detained 6 Months	1. Gillet of Berlin 2. Grand of Berlin 3. Schneiderhints of Berlin.	1. For Syrup and Brandy 2. For Syrup and Brandy 3. For Syrup
16.	The Jane, Capt. Gerard Royer Altag	The Culloden Capt. Abraham Boxel	From Charente to Hamborough	Taken Auguſt 7, 1747, detained 1 Year	1. The Widow Reyne of Berlin 2. Schuler and Reyne of Berlin	1. For Brandy For ditto
17.	A Hamburgher, the Friendſhip, Capt. John Quimann	The George, Capt. William Freebairn	From Rochelle to Hamborough	Taken Auguſt 10, 1747, detained 3 Months	Sandrat and Hummel of Magdeburgh	For Indigo

Number of Ships	*Names of the Ships and Captains*	*Names of the* Engliſh *Privateers who took them*	*Voyages in which the Capture was made*	*Date of the Capture, and Time of Detainment*	*Names of the* Pruſſian *Subjects who have ſuffered Damages thereby*	*Upon what Account, and of what Sorts of Merchandize*
18.	A Dane, the Young Prince Chriſtian, Capt. John Cornelius Leuwen	The Endeavour, Capt. Robert Crouſewall	From Marſeilles to Hamborough	Taken Sept. 12, 1747, detained till Jan. 2, 1748	1. Sandrat and Hummel of Magdeburgh 2. Matthis of Berlin	1. For Coffee, Saffron, and Verdigreaſe 2. For Almonds
19.	The Lady Margaret, Capt. Henry Bielenberg	The Culloden, Capt. Abr. Boxel	From Bourdeaux to Hamborough	Taken Auguſt 29, 1747, detained 3 ½ Months	1. Beker of Colberg 2. Schneiderhuntz of Berlin 3. Weiſbach of Potſdam	1. For Indigo 2. For Wine, Vinegar, and Brandy 3. For Coffee
20.	A Hamburgher, the Roſe-buſh, Capt Peter Claſſen	The Endeavour, Capt. Robert Crouſewall	From Bourdeaux to Hamborough	Taken April 6, 1748, detained 3 Months	1. Beker of Colberg 2. Weiſbach of Potſdam	1. For Indigo 2. For Syrup
21.	A Sonderburgher, the Mary-Sophia, Capt. Chriſt. Giegerſen	The Carliſle, Capt. William Owens	From Rochelle to Hamborough	Taken March 20, 1747, detained 5 Months	Meurer of Berlin	For Indigo
22.	The Anna-Sophia, Capt Henry Horn de Wolgaſt	Capt. Jellers	From Bourdeaux to Konigſberg	Taken March 21, 1747, detained 2 Days	Saturgus of Konigſberg	For Wine and Bayonne Hams
23.	A Dantzicker, the Hop, of Dantzick, Capt. Conrad Harlach	The Cheſterfield, Capt. Gilbeck	From Bourdeaux to Dantzick	Taken Aug. 17, 1747, detained 7 Months	1. Dickmann and Son of Konigſberg 2. Korn of Konigſberg 3. Albrecht of Konigſberg	1. For Prunes 2. For Wines 3. For Indigo
24.	The Young John, of Peterſburgh, Capt. Thomas Sieſers	The D. Wm. Capt. Richard Gravenor The Dolphin, Capt. Thomas Pierce	From Bourdeaux to Hamborough	Taken May 12, 1748, detained 3 Months.	1. The Widow of Bucks, and Son of Hirſchberg 2. Weiſbach of Potſdam	1. For Indigo 2. For Verdigreaſe

Num-

Number of Ships	*Names of the Ships and Captains*	*Names of the* Engliſh *Privateers who took them*	*Voyages in which the Capture was made*	*Date of the Capture, and Time Detainment*	*Names of the* Pruſſian *Subjects who have ſuffered Damages thereby*	*Upon what Account, and of what Sorts of Merchandize*
25.	The Gregory, of Bremen, Capt. Jacob Muller	The St Michael, Capt. George Clarmingham	From Bourdeaux to Hamborough	Taken March 19, 1748, detained 2 Months	Maquet and Son of Magdeburgh	For Brandies, Wines, Oils, Olives, Capers, Almonds
26.	The Young Catherine, commanded by Capt. Kupper, afterwards by Capt. Elkes	The Culloden, Capt. Abraham Boxel	From Bourdeaux to Hamborough	Taken in May, 1747, detained 6 Months	Schniderhintz of Berlin	For Syrup
27.	The Six Siſters, of Lubec	The Culloden, Capt. Abraham Boxel	From Bourdeaux to Lubec	Taken Oct. 21, 1747, detained 5 Months	Kritting of Konigſberg	For Indigo
28.	The St. Anne of Hamborough, Capt. Abr. Peterſon	The George, Capt. William Freebairn	From Bourdeaux to Hamborough	Taken Aug. 11, 1747, detained 3 ½ Months	Wiſbach of Potſdam	For Brandy
29.	The Young Eldert, of Hamborough, C. J. Stuven	An Engliſh Privateer	From Roan to Hamborough	Taken May 4, 1748, detained 5 Months	The Widow Schroder of Stetin	For Wine
30.	The Juſt Henry, of Hamborough, Capt. Henry Elkes	The Culloden, Capt Abraham Boxel	From Bourdeaux to Hamborough	Taken in July 1747, detained 6 Months	Pompera of Berlin	For Wines and Brandy
31.	A Dane, the Elizabeth, Capt Soren Peterſon	The Culloden, Capt. Abraham Boxel	From Hamborough to Roan	Taken Sept. 17, 1747, detained 8 Months	Splittgerber and Daun of Berlin	For Copper
32.	The Lady Clara, Capt. Hermann Claſſen Drieſt	The King George, Capt. John Harding	From Hamborough to Roan	Taken June 22, 1747, detained 5 ½ Months	Splittgerber and Daun	For Wax
33.	Adolphus Frederick, Capt. Jonas de Haſpin	1. Capt. Peter Wood 2. Capt Rich. Gravener	From Marſeilles to Hamborough	Taken April 10, 1748, detained 3 Months	The Jew Hertz of Potſdam	For Goats Hair and Anchovies

THE

THE

Duke of NEWCASTLE's LETTER,

By His MAJESTY's ORDER,

To Monſieur *MICHELL*, the King of *Pruſſia*'s Secretary of the Embaſſy, in Anſwer to the Memorial, and other Papers, delivered, by Monſieur MICHELL, to the Duke of NEWCASTLE, on the 23d of *November*, and 13th of *December*, 1752.

Whitehall, Feb. 8, 1753.

SIR,

I LOST no Time in laying before the King, the Memorial, which you delivered to me on the 23d of *November* laſt, with the Papers, that accompanied it.

His Majeſty found the Contents of it ſo extraordinary, that he would not return an Anſwer to it, or take any Reſolution upon it, till he had cauſed both the Memorial, and the *Expoſition des Motifs*, &c. which you put into my Hands ſoon after, by way of Juſtification of what had paſſed at *Berlin*, to be maturely conſidered; and till His Majeſty ſhould thereby be enabled to ſet the Proceedings of the Courts of Admiralty here, in their true Light; to the end, that his *Pruſſian* Majeſty, and the whole World, might be rightly informed of the Regularity of their Conduct; in which they appear, to have followed the only Method, which has ever been practiſed by Nations, where

Diſputes of this Nature could happen; and ſtrictly to have conformed themſelves to the Law of Nations, univerſally allowed to be the only Rule, in ſuch Caſes, when there is nothing ſtipulated to the contrary, by particular Treaties between the Parties concerned.

This Examination, and the full Knowledge of the Facts reſulting from it, will ſhew, ſo clearly, the Irregularity of the Proceedings of thoſe Perſons, to whom this Affair was referred at *Berlin*; that it is not doubted, from his *Pruſſian* Majeſty's Juſtice and Diſcernment, but that he will be convinced thereof, and will revoke the Detention of the Sums aſſigned upon *Sileſia*; the Payment of which, his *Pruſſian* Majeſty engaged to the Empreſs Queen to take upon himſelf, and of which the Reimburſement was an expreſs Article in the Treaties, by which the Ceſſion of that Dutchy was made.

I, therefore, have the King's Orders to ſend you the Report, made to his Majeſty, upon the Papers abovementioned, by Sir *George Lee*, Judge of the Prerogative Court; Doctor *Paul*, His Majeſty's Advocate General in the Courts of Civil Law; Sir *Dudley Ryder*, and Mr. *Murray*, his Majeſty's Attorney, and Solicitor General. This Report is founded on the Principles of the Law of Nations, received and acknowledged by Authorities, of the greateſt Weight, in all Countries; ſo that His Majeſty does not doubt, but that it will have the Effect deſired.

The Points, upon which this whole Affair turns, and which are deciſive, are,

Firſt, That Affairs of this Kind are, and can be, cognizable, only in the Courts belonging to that Power, where the Seizure is made; and, conſequently, that the Erecting foreign Courts, or Juriſdictions elſewhere, to take Cognizance thereof, is contrary to the known Practice of all Nations, in the like Caſes; and, therefore, a Proceeding which none can admit.

Secondly, That thoſe Courts, which are generally ſtyled Courts of Admiralty, and which include both the inferiour Courts, and the Courts of Appeal, always decide according to the univerſal Law

Law of Nations only; except in thoſe Caſes, where there are particular Treaties between the Powers concerned, which have altered the Diſpoſitions of the Law of Nations, or deviate from them.

Thirdly, That the Deciſions, in the Caſes complained of, appear by the incloſed Report, to have been made ſingly, upon the Rule preſcribed by the Law of Nations; which Rule is clearly eſtabliſhed, by the conſtant Practice of other Nations, and by the Authority of the greateſt Men.

Fourthly, That, in the Caſe in Queſtion, there cannot even be pretended to be any Treaty, that has altered this Rule, or by Virtue of which, the Parties could claim any Privileges, which the Law of Nations does not allow them.

Fifthly, That as, in the preſent Caſe, no juſt Grievance can be alledged, nor the leaſt Reaſon given, for ſaying, That Juſtice has been denied, when regularly demanded; and as, in moſt of the Caſes complained of, it was the Complainants themſelves, who neglected the only proper Means of procuring it; there cannot, conſequently, be any juſt Cauſe, or Foundation, for Repriſals.

Sixthly, That, even though Repriſals might be juſtified by the known and general Rules of the Law of Nations, it appears, by the Report, and indeed from Conſiderations, which muſt occur to every body, that Sums, due to the King's Subjects by the Empreſs Queen, and aſſigned by her upon *Sileſia*; of which Sums his *Pruſſian* Majeſty took upon himſelf the Payment, both by the Treaty of *Breſlau*, and by that of *Dreſden*, in Conſideration of the Ceſſion of that Country, and which, by Virtue of that very Ceſſion, ought to have been fully, and abſolutely diſcharged in the Year 1745, that is to ſay, one Year before any of the Facts complained of did happen; could not, either in Juſtice or Reaſon, or according to what is the conſtant Practice between all the moſt reſpectable Powers, be ſeized, or ſtopt, by way of Reprizals.

The ſeveral Facts, which are particularly mentioned above, are ſo clearly ſtated, and proved, in the incloſed Report; that I ſhall not repeat the particular Reaſons and Authorities alledged in Support of them, and in Juſtification of the Conduct and Proceedings in Queſtion. The King is perſuaded, that theſe Reaſons will be ſufficient alſo to determine the Judgment of all impartial People, in the preſent Caſe.

It is material to obſerve, upon this Subject, that this Debt on *Silſia* was contracted by the late Emperor *Charles* the Sixth; who engaged, not only to fulfil the Conditions expreſſed in the Contract, but even to give the Creditors ſuch further Security, as they might afterwards reaſonably aſk. This Condition had been very ill performed by a Transfer of the Debt, which had put it in the Power of a Third Perſon to ſeize, and confiſcate it.

You will not be ſurprized, Sir, that, in an Affair, which has ſo greatly alarmed the whole Nation, who are entitled to that Protection, which His Majeſty cannot diſpenſe with himſelf from granting; the King has taken Time, to have Things examined to the Bottom; and that his Majeſty finds himſelf obliged, by the Facts, to adhere to the Juſtice, and Legality, of what has been done in his Courts, and not to admit the Irregular Proceedings, which have been carried on elſewhere.

The late War furniſhed many Inſtances, which ought to have convinced all *Europe*, how ſcrupulouſly the Courts here do Juſtice, upon ſuch Occaſions. They did not even avail themſelves of an open War, to ſeize, or detain, the Effects of the Enemy, when it appeared that thoſe Effects were taken wrongfully before the War. This Circumſtance muſt do Honour to their Proceedings; and will, at the ſame Time, ſhew, that it was as little neceſſary, as proper, to have Recourſe elſewhere to Proceedings, entirely new, and unuſual.

The King is fully perſuaded, that what has paſſed at *Berlin*, has been occaſioned, ſingly, by the ill-grounded Informations, which

which his *Pruſſian* Majeſty has received, of theſe Affairs: And does not at all doubt, but that, when his *Pruſſian* Majeſty ſhall ſee them in their true Light, his natural Diſpoſition to Juſtice and Equity will induce him, immediately to rectify the Steps, which have been occaſioned by thoſe Informations; and to complete the Payment of the Debt charged on the Dutchy of *Sileſia*, according to his Engagements for that Purpoſe.

I am, with much Conſideration,

S I R,

Your moſt Obedient,

Humble Servant,

Holles Newcaſtle.

To

To the KING's moſt Excellent MAJESTY.

May it pleaſe Your Majeſty,

IN Obedience to your Majeſty's Commands, ſignified to us by his Grace the Duke of *Newcaſtle*, we have taken the Memorial, Sentence of the *Pruſſian* Commiſſioners, and Liſts marked A and B, which were delivered to his Grace by Monſ. *Michell*, the *Pruſſian* Secretary here, on the 23d of *November* laſt; and alſo the printed *Expoſition des Motifs*, &c. which was delivered to his Grace the 13th of *December* laſt, into our ſerious Conſideration. And we have directed the proper Officer to ſearch the Regiſters of the Court of Admiralty, and inform us how the Matter appeared from the Proceedings there, in Relation to the Caſes mentioned in the ſaid Liſts A and B; which he has accordingly done.

And your Majeſty having commanded us to report our Opinion, concerning the Nature and Regularity of the Proceedings under the *Pruſſian* Commiſſion, mentioned in the ſaid Memorial; and of the Claim or Demand pretended to be founded thereupon; and how far the ſame are conſiſtent with, or contrary to, the Law of Nations, and any Treaties ſubſiſting between your Majeſty and the King of *Pruſſia*, the eſtabliſhed Rules of Admiralty Juriſdiction, and the Laws of this Kingdom:

For the greater Perſpicuity, we beg leave to ſubmit our Thoughts upon the whole Matter in the following Method.

1*ſt*, To ſtate the clear Eſtabliſhed Principles of Law.

2*dly*, To ſtate the Fact.

3*dly*, To apply the Law to the Fact.

4*thly*,

4*thly*, To obſerve upon the Queſtions, Rules, and Reaſonings alledged in the ſaid Memorial, Sentence of the *Pruſſian* Commiſſioners, and *Expoſition des Motifs*, *&c.* which carry the Appearance of Objections to what we ſhall advance upon the former Heads.

Firſt, *As to the* L A W.

When two Powers are at War, they have a Right to make Prizes of the Ships, Goods, and Effects, of each other, upon the High Seas. Whatever is the Property of the Enemy may be acquired by Capture at Sea; but the Property of a Friend cannot be taken, provided he obſerves his Neutrality.

Hence the Law of Nations has eſtabliſhed,

That the Goods of an Enemy, on Board the Ship of a Friend, may be taken.

That the lawful Goods of a Friend, on Board the Ship of an Enemy, ought to be reſtored.

That Contraband Goods, going to the Enemy, tho' the Property of a Friend, may be taken as Prize; becauſe ſupplying the Enemy with what enables him better to carry on the War, is a Departure from Neutrality.

By the Maritime Law of Nations, univerſally and immemorially received, there is an eſtabliſhed Method of Determination, whether the Capture be, or be not, lawful Prize.

Before the Ship, or Goods, can be diſpoſed of by the Captor, there muſt be a regular judicial Proceeding, wherein both Parties may be heard, and Condemnation thereupon as Prize, in a Court of Admiralty, judging by the Law of Nations and Treaties.

The proper and regular Court for theſe Condemnations, is the Court of that State, to whom the Captor belongs.

The

The Evidence to acquit or condemn, with, or without, Coſts or Damages, muſt, in the firſt Inſtance, come merely from the Ship taken, *viz.* the Papers on Board, and the Examination on *Oath* of the Maſter and other Principal Officers; for which Purpoſe, there are Officers of Admiralty in all the conſiderable Sea Ports of every Maritime Power at War, to examine the Captains, and other Principal Officers of every Ship, brought in as Prize, upon General and Impartial Interrogatories: If there don't appear from thence Ground to condemn, as Enemy's Property, or Contraband Goods going to the Enemy, there muſt be an Acquittal, unleſs from the aforeſaid Evidence the Property ſhall appear ſo doubtful, that it is reaſonable to go into further Proof thereof.

A Claim of Ship, or Goods, muſt be ſupported by the Oath of ſome body, at leaſt as to Belief.

The Law of Nations requires good Faith: Therefore every Ship muſt be provided with complete and genuine Papers; and the Maſter at leaſt ſhould be privy to the Truth of the Tranſaction.

To enforce theſe Rules, if there be falſe or colourable Papers; if any Papers be thrown over-board; if the Maſter and Officers examined *in Præparatorio* groſsly prevaricate; if proper Ship's Papers are not on Board; or if the Maſter and Crew can't ſay, whether the Ship or Cargo be the Property of a Friend or Enemy, the Law of Nations allows, according to the different Degrees of Miſbehaviour, or Suſpicion, ariſing from the Fault of the Ship taken, and other Circumſtances of the Caſe, Coſts to be paid, or not to be received, by the Claimant, in Caſe of Acquittal and Reſtitution. On the other Hand, if a Seizure is made, without probable Cauſe, the Captor is adjudged to pay Coſts and Damages: for which Purpoſe, all Privateers are obliged to give Security for their good Behaviour: And this is referred to, and expreſsly ſtipulated by many Treaties*.

Though

* Treaty between *England* and *Holland*, 17 *Feb.* 1668, Art. 13. Treaty 1 *Dec.* 1674. Art. 10. Treaty between *England* and *France* at *St. Germains*, 24 *Feb.*

Though from the Ship Papers, and the preparatory Examinations, the Property don't ſufficiently appear to be Neutral, the Claimant is often indulged with Time, to ſend over Affidavits to ſupply that Defect: If he will not ſhew the Property, by ſufficient Affidavits, to be Neutral, it is preſumed to belong to the Enemy. Where the Property appears from Evidence not on Board the Ship, the Captor is juſtified in bringing her in, and excuſed paying Coſts, becauſe he is not in Fault; or, according to the Circumſtances of the Caſe, may be juſtly entitled to receive his Coſts.

If the Sentence of the Court of Admiralty is thought to be erroneous, there is in every Maritime Country a ſuperior Court of Review, conſiſting of the moſt conſiderable Perſons; to which the Parties, who think themſelves aggrieved, may appeal: and this ſuperior Court judges by the ſame Rule which governs the Court of Admiralty, *viz.* The Law of Nations, and the Treaties ſubſiſting with that neutral Power, whoſe Subject is a Party before them.

If no Appeal is offered, it is an Acknowledgement of the Juſtice of the Sentence by the Parties themſelves, and concluſive.

This Manner of Tryal and Adjudication is ſupported, alluded to, and inforced, by many Treaties*.

In

24 *Feb.* 1677. Article 10. Treaty of Commerce at *Ryſwick*, *Sept.* 20. 1697. between *France* and *Holland*, Art. 30. Treaty of Commerce at *Utrecht*, 31 *March*, 1713. between *Great-Britain* and *France*, Art. 29.

* As appears, with reſpect to Courts of Admiralty adjudging the Prizes taken by thoſe of their own Nation, and with reſpect to the Witneſſes to be examined in thoſe Caſes, from the following Treaties.---Treaty between *England* and *Holland*, 17 *Feb.* 1668. Art. 9. and 14. Treaty 1 *Dec.* 1674. Art. 11. Treaty 29th of *April* 1689. Art. 12, 13. Treaty between *England* and *Spain*, 23 *May*, 1667. Art. 23. Treaty of Commerce at *Ryſwick*, 20 *Sept.* 1697. between *France* and *Holland*, Art. 26 and 31. Treaty between *England* and *France*, 3 *Nov.* 1655. Art. 17 and 18. Treaty of Commerce between *England* and *France* at *St. Germains*, 29 *March*, 1632. Art. 5 and 6. Treaty at *St. Germains*, 24 *Feb.* 1677. Art. 7. Treaty of Commerce between *Great-Britain* and *France*, at *Utrecht*, 31 *March*, 1713. Art. 26 and 30. Treaty between *England* and *Denmark*, 29 *Nov.* 1669. Art. 23 and 34. *Heineccius*,

In this Method, all Capture at Sea were try'd during the laſt War, by *Great-Britain*, *France* and *Spain*, and ſubmitted to by the neutral Powers. In this Method, by Courts of Admiralty acting according to the Law of Nations, and particular Treaties, all Captures at Sea have immemorially been judged of, in every Country of *Europe*. Any other Method of Tryal would be manifeſtly unjuſt, abſurd, and impracticable.

Tho' the Law of Nations be the general Rule; yet it may, by mutual Agreement between two Powers, be varied or departed from; and where there is an Alteration, or Exception, introduced by particular Treaties, that is the Law between the Parties to the Treaty: and the Law of Nations only governs ſo far as it is not derogated from by the Treaty.

Thus by the Law of Nations, where two Powers are at War, all Ships are liable to be ſtopped, and examined to whom they belong, and whether they are carrying Contraband to the Enemy: But particular Treaties have enjoined a leſs Degree of Search on the Faith of producing ſolemn Paſſports, and formal Evidences of Property, duly atteſted.

Particular Treaties too have inverted the Rule of the Law of Nations, and, by Agreement, declared the Goods of a Friend on board the Ship of an Enemy to be Prize; and the Goods of an Enemy, on Board the Ship of a Friend, to be free; as appears from the Treaties already mentioned, and many others*.

who was Privy-Counſellor to the King of *Pruſſia*, and held in the greateſt Eſteem, in his Treatiſe *De Navibus ob vecturam vetitarum mercium commiſſis*, Cap. 2. Sect. 17 and 18, ſpeaks of this Method of Trial.

With reſpect to Appeals or Reviews:---From Treaty between *England* and *Holland*, 1 *Dec.* 1674. Art. 12, as it is explained by Art. 2, of the Treaty at *Weſtminſter*, 6 *Feb.* 1715-16. Treaty between *England* and *France* at *St. Germains*, 24 *Feb.* 1677, Art. 12. Treaty of Commerce at *Ryſwick*, 20 *Sept.* 1697, between *France* and *Holland*, Art. 33. Treaty of Commerce at *Utrecht*, 31 *March*, 1713, between *Great-Britain* and *France*, Art. 31 and 32. and other Treaties.

* Particularly by the aforeſaid Treaty between *England* and *Holland*, 1 *Dec.* 1674. and the Treaty of *Utrecht*, between *Great-Britain* and *France*.

So

So likewiſe, by particular Treaties, ſome Goods reputed Contraband by the Law of Nations are declared to be free.

If a Subject of the King of *Pruſſia* is injured by, or has a Demand upon, any Perſon here, he ought to apply to your Majeſty's Courts of Juſtice, which are equally open and indifferent to Foreigner or Native: So, *vice verſa*, if a Subject here is wronged by a Perſon living in the Dominions of his *Pruſſian* Majeſty, he ought to apply for Redreſs in the King of *Pruſſia*'s Courts of Juſtice.

If the Matter of Complaint be a Capture at Sea during War, and the Queſtion relative to Prize, he ought to apply to the Judicatures eſtabliſhed to try theſe Queſtions.

The Law of Nations, founded upon Juſtice, Equity, Convenience, and the Reaſon of the Thing, and confirmed by long Uſage, don't allow of Reprizals, except in Caſe of violent Injuries, directed or ſupported by the State, and Juſtice abſolutely denied *in re minime dubiâ*, by all the Tribunals, and afterwards by the Prince *.

Where the Judges are left free, and give Sentence according to their Conſcience, though it ſhould be erroneous, that would be no Ground for Reprizals. Upon doubtful Queſtions, different Men think and judge differently; and all a Friend can deſire, is, that Juſtice ſhould be as impartially adminiſtred to him, as it is to the Subjects of that Prince, in whoſe Courts the Matter is try'd.

* *Grotius de Jure Belli ac Pacis*, Lib. 3. Cap. 2. Sect. 4, 5.

Treaty between *England* and *Holland*, 31 *July*, 1667. Art. 31. "Reprizals "ſhall not be granted, till Juſtice has been demanded according to the ordinary "Courſe of Law."

Treaty of Commerce at *Ryſwick*, 20 *Sept.* 1697. between *France* and *Holland*, Art. 4. "Reprizals ſhall not be granted, but on manifeſt Denial of "Juſtice."

Secondly, *As to the* FACT.

We have ſubjoined hereto two Liſts, tallying with thoſe marked A. and B. which were delivered to His Grace the Duke of *Newcaſtle*, by Monſ. *Michell*, with the ſaid Memorial, the 23d of *November* laſt; and are alſo printed at the End of the ſaid *Expoſition des Motifs*, &c. From whence it will appear, that as to the Liſt A. which contains eighteen Ships and their Cargoes,

4 If ever taken, were reſtored by the Captors themſelves, to the Satisfaction of the *Pruſſians*, who never have complained in any Court of Juſtice here.

1 Was reſtored by Sentence, with full Coſts and Damages, which were liquidated at 2801 *l.* 12 *s.* 1 *d.* Sterling.

3 Ships were reſtored by Sentence, with Freight for ſuch of the Goods as manifeſty belonged to the Enemy, and were condemned.

4 Ships were reſtored by Sentence; but the Cargoes, or Part of them, condemned as Prize, or Contraband, and are not now alledged, in the Liſt A. or B. to have been *Pruſſian* Property.

5 Ships and Cargoes were reſtored by Sentence, but the Claimant ſubjected to pay Coſts, becauſe, from the Ship-Papers, and Preparatory Examinations, there was Ground to have condemned; and the Reſtitution was decreed merely on the Faith of Affidavits afterwards allowed.

1 Ship and Cargo was reſtored by Sentence upon an Appeal, but, from the Circumſtances of the Capture, without Coſts on either Side.

18

There need no Obſervations upon this Liſt. As to the eight Caſes firſt above mentioned, there cannot be the Colour of Complaint.

As

As to the four next, the Goods muſt be admitted to have been rightly condemned, either as Enemy's Property, or Contraband, for they are not now mentioned in the Liſts A. or B.

If Contraband, the Ship could have neither Freight nor Coſts; and the Sentences were favourable, in reſtoring the Ships, upon Preſumption, that the Owners of the Ships were not acquainted with the Nature of the Cargo, or Owners thereof. If Enemy's Property, the Ships could not be entitled to Freight, becauſe the Bills of Lading were falſe, and purported the Property to belong to *Pruſſians*.

The Ships could not be entitled to Coſts, becauſe the Cargoes, or Part of them, being lawful Prize, the Ships were rightly brought in.

As the ſix remaining Ships and Cargoes were reſtored, the only Queſtion muſt be, upon the Paying or not Receiving Coſts, which depends upon the Circumſtances of the Capture, the Fairneſs of the Ship's Documents, and Conduct of her Crew; and neither the *Pruſſian* Commiſſioners, the ſaid Memorial, or ſaid *Expoſition des Motifs*, &c. alledge a ſingle Reaſon, why, upon the particular Circumſtances of theſe Caſes, the Sentences were wrong.

As to the Liſt B.

Every Ship, on Board which the Subjects of *Pruſſia* claim to have had Property, was bound to, or from, a Port of the Enemy; and many of them appeared clearly to be, in Part, laden with the Goods of the Enemy, either under their own, or fictitious Names.

In every Inſtance, where it is ſuggeſted that any Part of the Cargo belong'd to a *Pruſſian* Subject, though his Property did not appear from the Ship's Papers, or Preparatory Examinations, which it ought to have done, ſufficient Time was indulged to that *Pruſſian* Subject, to make an Affidavit, that the Property was *bona fide* in him: And the Affidavit of the Party himſelf has

has been received as Proof of the Property of the *Pruſſian*, ſo as to intitle him to Reſtitution.

Where the Party wo'nt ſwear at all, or ſwears evaſively, it is plain he only lends his Name, to cover the Enemy's Property, as often came out to be the Caſe beyond the Poſſibility of Doubt.

It appears by a Letter $\frac{29 \text{ May}}{9 \text{ June}}$ 1747, from Monſ. *Andrié* to his *Pruſſian* Majeſty, exhibited in a Cauſe, and certified to be a true Extract by Monſ. *Michell* under his Hand, that this colourable Manner of ſcreening the Goods of the Enemy was ſtated in the following Words.

" Your Majeſty's Subjects ought not to load on board Neutral " Ships any Goods really belonging to the Enemies of *England*, " but to load them for their own Account, whereby they may " ſafely ſend them to any Country they ſhall think proper, with- " out running any Riſk: Then, if Privateers commit any Da- " mage to the Ships belonging to your Majeſty's Subjects, *you* " *may depend on full Juſtice being done here, as in all the like* " *Caſes hath been done.*"

Liſt B, contains Thirty-three Caſes.

2 Two of them never came before a Court of Juſtice in *England*, but (if taken) were reſtored by the Captors themſelves, to the entire Satisfaction of the Owners.

16 In ſixteen of them, the Goods claimed by the *Pruſſian* Subjects appear to have been actually reſtored, by Sentence, to the Maſters of the Ships in which they were laden; and, by the Cuſtoms of the Sea, the Maſter is in the Place of the Lader, and anſwerable to him.

14 In Fourteen of the Caſes, the *Pruſſian* Property was not verified, by the Ship's Papers, or preparatory Examinations, or Claimant's own Affidavit, which he was allowed Time to make.

1 And the other Cauſe, with reſpect to Part of the Goods,
33 is ſtill depending, neither Party having moved for Judgment

ment *. And ſo conſcious were the Claimants, that the Court of Admiralty did Right, there is not an Appeal, in a ſingle Inſtance, in Liſt B, and but one, in Liſt A.

Thirdly, *To apply the Law to the* FACT.

The Sixth Queſtion, in the ſaid *Expoſition des Motifs* &c. ſtates the Right of Reprizals to be, *puiſqu'on leur a ſi longtems denié toute la Juſtice qu'ils étoient fondés de demander.*

The ſaid Memorial founds the Juſtice, and Propriety of his *Pruſſian* Majeſty's having recourſe to Reprizals; becauſe his Subjects *n'ont pu obtenir juſqu'à preſent aucune Juſtice* des Tribunaux Anglois *qu'ils ont reclamés, ou du Gouvernement auquel ils ont porté leurs Plaintes.* And in another Part of the Memorial it is put, *après avoir en vain demandé des Reparations de ceux qui ſeuls pouvoient les faire.*

The contrary of all which is manifeſt from the above State, and Liſts hereto annexed.

In Six of the Caſes ſpecified, If ſuch Captures ever were made, the *Pruſſian* Subjects were ſo well ſatisfied with the Reſtitution made by the Captors, that they never complained in any Court whatſoever in this Kingdom.

The reſt were judged of, by a Court of Admiralty, the only proper Court to decide of Captures at Sea, both with reſpect to the Reſtitution, and the Damages and Coſts; acting according to the Law of Nations, the only proper Rule to decide by: And Juſtice has been done by the Court of Admiralty ſo impartially, that all the Ships, alledged in Liſt A, to have been *Pruſſian*, were reſtored; and all the Cargoes, mentioned in either Liſt A or B, were reſtored, excepting Fifteen, one of which is ſtill undetermined.

* The *Pruſſian* has ſince applied for Judgment, on the 29th of *January*, and obtained Reſtitution.

And

And, in all the Caſes in both Liſts, Juſtice was done, ſo entirely to the Conviction of the private Conſcience of the *Pruſſian* Claimants, that they have acquieſced under the Sentences, without appealing; except in one ſingle Inſtance, where the Part of the Sentence complained of was reverſed.

Though the *Pruſſian* Claimants muſt know, that, by the Law of Nations, they ought not to complain to their own Sovereign, till Injuſtice *in re minime dubiâ* was finally done them, paſt Redreſs; and though they muſt know, that Rule of the Law of Nations held more ſtrongly upon this Occaſion, becauſe the Property of the Prize was given to the Captors, and ought, therefore, to be litigated with them. The *Pruſſian*, who, by his own Acquieſcence, ſubmits to the Captors having the Prize, cannot afterwards with Juſtice make a Demand upon the State. If the Sentence was wrong, it is owing to the Fault of the *Pruſſian*, that it was not redreſſed. But, it is not attempted to be ſhewn, even now, that theſe Sentences were unjuſt in any Part of them, according to the Evidence and Circumſtances appearing before the Court of Admiralty, and that is the Criterion.

For as to the *Pruſſian* Commiſſion to examine theſe Caſes, *ex parte*, upon new Suggeſtions; it never was attempted in any Country of the World before. Prize, or not Prize, muſt be determined by Courts of Admiralty, belonging to the Power whoſe Subjects make the Capture: Every Foreign Prince in Amity has a Right to demand that Juſtice ſhall be done his Subjects in thoſe Courts, according to the Law of Nations, or particular Treaties, where any are ſubſiſting. If *in re minime dubiâ* theſe Courts proceed upon Foundations directly oppoſite to the Law of Nations, or ſubſiſting Treaties, the Neutral State has a Right to complain of ſuch Determination.

But there never was, nor ever can be, any other Equitable Method of Tryal. All the Maritime Nations of *Europe* have, when at War, from the earlieſt Times, uniformly proceeded in this Way, with the Approbation of all the Powers at Peace. Nay, the Perſons acting under this extraordinary and unheard-of Com-

Commiſſion from his *Pruſſian* Majeſty, don't pretend to ſay, that in the Four Caſes of Goods condemned here, for which Satisfaction is demanded in Liſt A, the Property really belonged to *Pruſſian* Subjects: But they profeſs to proceed upon this Principle, evidently *falſe*, that, tho' theſe Cargoes belonged to the Enemy, yet being on Board *any Neutral Ship*, they were not liable to Enquiry, Seizure, or Condemnation.

Fourthly, *From the Queſtions, Rules, Reaſonings, and Matters, alledged in the ſaid Memorial, Sentence of the* Pruſſian *Commiſſioners, and* Expoſition des Motifs, *&c. the following Propoſitions may be drawn, as carrying the Appearance of Objections to what has been above laid down.*

Firſt Propoſition.

That by the Law of Nations, the Goods of an Enemy cannot be taken on Board the Ship of a Friend: and this the Pruſſian *Commiſſioners lay down as the Baſis of all they have pretended to do.*

Anſwer. The Contrary is too clear to admit of being diſputed. It may be proved, by the Authorities of every Writer upon the Law of Nations; ſome of different Countries are referred to *. It

* *Il Conſolato del Mare*, cap. 273, expreſsly ſays, The Enemy's Goods, found on board a Friend's Ship, ſhall be confiſcated. And this is a Book of great Authority.

Grotius de Jure Belli ac Pacis, Lib. iii. cap. 1, Section 5, numero 4, in the Notes, cites this Paſſage in the *Il Conſolato*, and in his Notes, Lib. iii. cap. 6. Sect. 6.

Loccenius De Jure Maritimo, lib. ii. cap. 4, Sect. 12.

Voet De Jure Militari, cap. 5. n. 21.

Heineccius, the learned *Pruſſian* before quoted, *De Navibus ob Vecturam vetitarum Mercium commiſſis*, cap. ii. Sect. 9. is clear and explicit upon this Point.

Bynkerſhoeck Quæſtiones Juris Publici, lib. i. cap. 14, per totum.

Zouch (an *Engliſhman*) in his Book *De Judicio inter Gentes*, pars 2, Sect. 8, numero 6.

It may be proved by the conſtant Practice, antient and modern: but the General Rule cannot be more ſtrongly proved, than by the Exception which particular Treaties have made to it †.

Second Propoſition.

It is alledged that Lord Carteret, *in* 1744, *by two Verbal Declarations, gave Aſſurances in your Majeſty's Name, that nothing on Board a* Pruſſian *Ship ſhould be ſeized, except Contraband; conſequently that all Effects, not contraband, belonging to the Enemy, ſhould be free; and that theſe Aſſurances were afterwards confirmed in Writing by Lord* Cheſterfield *the 5th of* January 1747.

Anſwer. The Fact makes this Queſtion not very material, becauſe there are but four Inſtances in Liſts A or B, where any Goods, on Board a *Pruſſian* Ship, have been condemned; and no Satisfaction is pretended to be demanded for any of thoſe Four Cargoes in Liſts A and B. However it may be proper to ſhew how groundleſs this Pretence is.

Taking the Words, alledged to have been ſaid by Lord *Carteret*, as they are ſtated; they don't warrant the Inferences endeavoured to be drawn from them. They import no New Stipulation, different from the Law of Nations; but expreſsly profeſs to treat the *Pruſſians* upon the ſame Foot with the Subjects of other Neutral Powers under the like Circumſtances; *i. e.* with whom there was no particular Treaty. For the Reference to other Neutral Powers cannot be underſtood to communicate

Treaty between *Great-Britain* and *Sweden*, 23 *Oct.* 1661. Art. 12 and 13. Treaty between *Great-Britain* and *Denmark*, 29 *Nov.* 1669, Art. 2d.---And the Paſſport or Certificate, ſettled by that Treaty, are material as to this Point.

† Treaty between *France* and *England*, 24 *Feb.* 1677, Art. 8.
Treaty of *Utrecht* between *France* and *England*, 1713, Art. 17.
Treaty between *England* and *Holland*, 17 *Feb.* 1668, Art. 10.
Treaty between *England* and *Holland*, 1 *Dec.* 1674, Art. 8.
Treaty between *England* and *Portugal*, 10 *July*, 1654, Art. 23.
Treaty between *France* and the *States General* at *Utrecht*, 11 *April*, 1713, Art. 26.

the

the Terms of any particular Treaty. It is not ſo ſaid. The Treaties with *Holland*, *Sweden*, *Ruſſia*, *Portugal*, *Denmark*, &c. all differ. Who can ſay which was communicated? There would be no Reciprocity; the King of *Pruſſia* don't agree to be bound by the Clauſes, to which other Powers have, by their reſpective Treaties, agreed. No *Pruſſian* Goods, on Board an Enemy's Ship, have ever been condemned here; and yet they ought, if the Treaties with *Holland* were to be the Rule between *Great Britain* and *Pruſſia*; nay, if theſe Treaties were to be the Rule, all now contended for, on the Part of *Pruſſia*, is clearly wrong; becauſe, by Treaty, the *Dutch*, in the laſt Reſort, are to apply to the Court of Appeal here.

Treaty of Alliance between Great-Britain *and* Holland *at* Weſtminſter, *the 6th of* February 1715-17, Article II.

'Whereas ſome Diſputes have happened, touching the Explanation of the 12th Article of the Treaty Marine in 1674. it is agreed and concluded, for deciding any Difficulty upon that Matter, to declare, by theſe Preſents, that by the Proviſions mentioned in the ſaid Article, are meant thoſe which are received by Cuſtom in *Great Britain* and in the *United Provinces*, and always have been received, and *which have been Granted, and always are Granted, in the like Caſe, to the Inhabitants of the ſaid Countries, and to every Foreign Nation.*'

Lord *Carteret* is ſaid twice to have refuſed, in which Monſieur *Andrié acquieſces*, to give any Thing in Writing, as not uſual in *England*.

Suppoſing the Converſations to mean no more, than a Declaration of courſe, that Juſtice ſhould be done to the *Pruſſians*, in like Manner as to any other Neutral Power, with whom there was no Treaty; there was no Occaſion for Inſtruments in Writing; becauſe in *England* the Crown never interferes with the Courſe of Juſtice. No Order or Intimation is ever given to any Judge. Lord *Carteret* therefore knew that it was the Duty of

the Court of Admiralty to do equal Juſtice, and that they would, of themſelves, do what he ſaid to Monſieur *Andrié*.

Had it been intended, by Agreement, to introduce, between *Pruſſia* and *England*, a Variation, in any Particular, from the Law of Nations; and conſequently, a New Rule for the Court of Admiralty, to decide by; it could only be done by a Solemn Treaty, in Writing, properly authorized, and authenticated. The Memory of it could not otherwiſe be preſerved; the Parties intereſted, and the Courts of Admiralty, could not, otherwiſe, take Notice of it.

But Lord *Cheſterfield*'s Confirmation, in a Letter of the 5th of *January* 1747, being relied upon, the Books of the Secretary's Office have been ſearched, and the Letter to Monſ. *Mitchell* is found, which is *verbatim* as follows.

Tranſlation of the Earl of Cheſterfield's *Letter to Monſ.* Michell.

Whitehall, Jan. 5, 1747-8.

SIR,

HAVING had the Honour to receive the King's Orders upon the Subject of the Memorial, which you delivered to me on the 8th Inſtant, N. S. I would not delay informing you, that his Majeſty, in order to omit nothing, whereby He may ſhew His Attention to the King your Maſter, makes no Difficulty in declaring, That His Majeſty has never had, or will have, any Intention, to give any Interruption to the Navigation of the *Pruſſian* Subjects, as long as they ſhall take Care to carry on their Commerce in a lawful Manner, and conformable to the ancient Uſage, as eſtabliſhed and acknowledged amongſt neutral Powers.

His *Pruſſian* Majeſty cannot be ignorant, that there are Treaties of Commerce actually ſubſiſting between *Great-Britain* and certain Neutral States, and that by Means of the Engagements formerly contracted on each Side by thoſe Treaties, every Thing relating

relating to the Manner of reciprocally carrying on their Commerce, has been finally ſettled and regulated.

At the ſame Time, it does not appear that any ſuch Treaty exiſts at preſent, or ever did exiſt, between his Majeſty and the King of *Pruſſia:* Nevertheleſs, that has never hindred the *Pruſſian* Subjects being favoured by *England* with reſpect to their Navigation, as much as other Neutral Nations: And his Majeſty does not ſuppoſe, that the King your Maſter means to require Diſtinctions from his Majeſty, much leſs any Preferences, in Favour of His Subjects in this Point.

His *Pruſſian* Majeſty is too well informed, not to know, that there are in this Government fix'd and eſtabliſh'd Laws, which cannot be departed from; and that in caſe any *Engliſh* Ships of War ſhould commit the leaſt Injuſtice to the Trading Subjects of the King your Maſter, here is a Tribunal, *viz.* the High Court of Admiralty where they have a Right to apply and make their Complaints: and they may be previouſly aſſured, that, in ſuch Caſe, impartial Juſtice will be adminiſtred to them; the Juridical Proceedings of the ſaid Court being, and having ever been, unimpeach'd and irreproachable, as appears by numerous Examples of Neutral Veſſels illegally taken, having been reſtored, with Coſts and Damages, to the Proprietors.

This is the Anſwer the King has ordered me to give, upon the Contents of your ſaid Memorial; and His Majeſty cannot but flatter himſelf, that, in conſequence hereof, the King your Maſter's Deſire will be fully anſwered, with relation to the Point in Queſtion; of which his Majeſty is the more aſſured, as he is perſuaded that the King of *Pruſſia* would not require any Thing, but what is Equitable.

I am, with much Conſideration, Sir,

Your moſt obedient, and moſt humble Servant,

CHESTERFIELD.

There

There need no Obſervations. It is Explicit, and in expreſs Terms puts *Pruſſia* upon the Foot of other Neutral Powers with whom there was no Treaty; and points out the proper Way of applying for Redreſs.

The verbal Declarations, made by Lord *Carteret* in 1744, which are ſaid to have been confirmed by this Letter from Lord *Cheſterfield*, cannot have meant more than the Letter expreſſes.

And it is manifeſt, by the above Extract from Monſieur *Andrié*'s Letter to his *Pruſſian* Majeſty, that in *May* 1747, Monſieur *Andrié* himſelf underſtood, that Goods of the Enemy, taken on board neutral Ships, ought to be condemned as Prize.

It is evident from Authentic Acts, that the Subjects of *Pruſſia* never underſtood that any new Right was communicated to them.

Before the Year 1746, the *Pruſſians* don't appear to have openly engaged in Covering the Enemy's Property.

The Men of War and Privateers could not abſtain from Captures in Conſequence of Lord *Carteret*'s verbal Aſſurances in 1744; becauſe they never were, nor could be, known: And there was no Occaſion to notify them, ſuppoſing them only to promiſe impartial Juſtice. For all Ships of War were bound to act, and Courts of Admiralty to judge, according to the Law of Nations, and Treaties.

Till 1746, the *Pruſſian* Documents were, a Certificate of the Admiralty, upon the Oath of the Builder, that the Ship was *Pruſſian* built; and a Certificate of the Admiralty, upon the Oath of the Owner, that the Ship was *Pruſſian* Property.

From 1746, the *Pruſſians* engaged in the gainful Practice of Covering the Enemy's Goods; but were at a Loſs in what Shape, and upon what Pretences, it might beſt be done.

On board the Ship the *Sœurs*, was found a Paſs, bearing Date at *Stettin* the 6th of *October*, 1746, under the Royal Seal of the *Pruſſia* Regency of *Pomerania*, &c. alledging the Cargo, which

which was Ship Timber, bound for Port *l'Orient*, to be *Pruſſian* Property, and, in conſequence thereof, claiming *Freedom of the Ship.*

Claiming Freedom to the Ship, from the Property of the Cargo, being quite new, the Propoſition was afterwards reverſed: And on board a Ship, called the *Jumeaux*, was found a Paſs, bearing Date at *Stettin* the 27th of *June* 1747, under the Royal Seal, *&c.* alledging the Ship to be *Pruſſian* Property, and, in conſequence thereof, claiming *Freedom to the Goods.*

But this Paſs was not ſolely relied on; for there was alſo found on board the ſame Ship, another Paſs, bearing Date at *Stettin* the 14th of *June* 1747, under the Royal Seal, *&c.* alledging the Cargo to be *Pruſſian* Property.

And it is remarkable, that the Oaths, upon which theſe Paſſes were granted, appeared manifeſtly to be falſe: And neither of the Cargoes, to which they relate, are now ſo much as alledged to have been *Pruſſian* Property in ſaid Liſts A or B.

It being mentioned, in the ſaid *Expoſition des Motifs, &c.* that Monſ. *Michell*, in *September* 1747, made verbal Repreſentations to Lord *Cheſterfield*, in reſpect to the Cargo, taken on board the ſaid Ship called the 3 *Sœurs*, which was claimed as *Pruſſian* Property; and no Mention being made in Liſts A and B of the ſaid Cargo; we directed the Proceedings in that Cauſe to be laid before us, where it appears in the fulleſt and cleareſt Manner, from the Ship's Papers and Depoſitions, that the Cargo was Timber, laden on the Account, and at the Riſk, of *Frenchmen*, to whom it was to be delivered, at Port *l'Orient*, *they paying Freight according to Charty-Party.* That the *Pruſſian* Claimant was neither Freighter, Lader, or Conſignee; and had no other Intereſt or Concern in the Matter, than to lend his Name and Conſcience: For he ſwore, that the Cargo was his Property, and laden on or before the 6th of *October*, 1746; and yet the Ship was then in Ballaſt, and the Whole of the Cargo in Queſtion was not laden before *May* 1747.

Several

Several other *Pruſſian* Claims, had, in like Manner, come out ſo clearly to be merely colourable, that Monſ. *Andrié*, from his ſaid Letter, $\frac{29\ May}{9\ June}$ 1747, appears to have been aſhamed of them.

Third Propoſition.

That Lord Carteret, *in his ſaid two Converſations, ſpecified, in your Majeſty's Name, what Goods ſhould be deemed Contraband.*

Anſwer. The Fact makes this Queſtion totally immaterial, becauſe no Goods condemned as Contraband, or which were alledged to be ſo, are ſo much as now ſuggeſted to have been *Pruſſian* Property in the ſaid Liſts A and B; and, therefore, whether as Enemy's Property, or Contraband; they were either Way rightly condemned; and the Bills of Lading being falſe, the Ships could not be intitled to Freight.

But, if the Queſtion was material, the verbal Declarations of a Miniſter in Converſation, might ſhew what he thought Contraband by the Law of Nations; but never could be underſtood to be equivalent to a Treaty, derogating from that Law.

All the Obſervations, upon the other Part of theſe verbal Declarations, hold equally as to this.

Fourth Propoſition.

That the Britiſh *Miniſters have ſaid, that theſe Queſtions were decided according to the Laws of* England.

Anſwer. They muſt have been miſunderſtood; for the Law of *England* ſays, that all Captures at Sea, as Prize, in Time of War, muſt be judged of in a Court of Admiralty, according to the Law of Nations, and particular Treaties, where there are any.

There

There never exiſted a Caſe, where a Court, judging according to the Laws of *England* only, ever took Cognizance of Prize.

The Property of Prizes being given, during the laſt War, to the Captors; your Majeſty could not arbitrarily releaſe the Capture, but left all Caſes to the Deciſion of the proper Courts, judging by the Law of Nations and Treaties, where there were any: And it never was imagined, that the Property of a Foreign Subject, taken as Prize on the High Seas, could be affected by Laws peculiar to *England*.

Fifth Propoſition.

That your Majeſty could no more erect Tribunals for trying theſe Matters, than the King of Pruſſia.

Anſwer. Each Crown has, no doubt, an equal Right to erect Admiralty Courts, for the Tryal of Prizes taken by Virtue of their reſpective Commiſſions; but neither has a Right to try the Prizes taken by the other, or to reverſe the Sentences given by the other's Tribunal. The only regular Method of rectifying their Errors, is, by Appeal to the ſuperior Court.

This is the clear Law of Nations; and, by this Method, Prizes have always been determined, in every other Maritime Country of *Europe*, as well as *England*.

Sixth Propoſition.

That the Sea is Free.

Anſwer. They who maintain that Propoſition in its utmoſt Extent, don't diſpute but that when two Powers are at War, they may ſeize the Effects of each other upon the High Seas, and on Board the Ships of Friends: Therefore that Controverſy is not in the leaſt applicable upon the preſent Occaſion *.

* This appears from *Grotius* in the Paſſages above cited, Lib. iii. cap. 1. ſect. 5. n. 4. in his Notes. And Lib. iii. cap. 6. ſect. 6. in his Notes.

Seventh Propoſition.

Great-Britain *iſſued Reprizals againſt* Spain, *on Account of Captures at Sea.*

Anſwer. Theſe Captures were not made in Time of War with any Power.

They were not judged of by Courts of Admiralty, according to the Law of Nations, and Treaties, but by Rules, which were themſelves complained of, in Revenue Courts: The Damages were afterwards admitted, liquidated at a certain Sum, and agreed to be paid by a Convention, which was not performed. Therefore Reprizals iſſued; but they were general. No Debts due here to *Spaniards* were ſtopped; no *Spaniſh* Effects here were ſeized. Which leads to one Obſervation more.

The King of *Pruſſia* has engaged his Royal Word to pay the *Sileſia* Debt to Private Men.

It is negotiable, and many Parts may have been aſſigned to the Subjects of other Powers. It will not be eaſy to find an Inſtance, where a Prince has thought fit to make Reprizals upon a Debt, due from himſelf to private Men. There is a Confidence that this will not be done; a private Man lends Money to a Prince, upon the Faith of an Engagement of Honour, becauſe a Prince cannot be compelled, like other Men, in an adverſe Way, by a Court of Juſtice. So ſcrupulouſly did *England*, *France* and *Spain* adhere to this Public Faith, that, even during the War, they ſuffered no Enquiry to be made, whether any Part of the Public Debts was due to Subjects of the Enemy, tho' it is certain, many *Engliſh* had Money in the *French* Funds, and many *French* had Money in ours.

This Loan to the late Emperor of *Germany*, *Charles* the VIth, in *January* 1734-5, was not a State Tranſaction, but a mere private Contract with the Lenders, who advanced their Money, upon the Emperor's obliging himſelf, his Heirs and Poſterity, to repay the Principal with Intereſt, at the Rate, in the Manner, and

and at the Times in the Contract mentioned, *without any Delay, Demurr, Deduction, or Abatement whatſoever*; and, leſt the Words and Inſtruments made uſe of ſhould not be ſtrong enough, he promiſes to ſecure the Performance of his Contract, *in and by ſuch other Inſtruments, Method, Manner, Form, and Words, as ſhould be moſt effectual and valid, to bind the ſaid Emperor, his Heirs, Succeſſors and Poſterity*, or as the Lenders ſhould reaſonably deſire.

As a ſpecific real Security, he mortgaged his Revenues, ariſing from the Dutchies of *Upper* and *Lower Sileſia*, for Payment of Principal and Intereſt; and the whole Debt, Principal and Intereſt, was to be diſcharged in the Year 1745. If the Money could not be paid out of the Revenues of *Sileſia*, the Emperor, his Heirs and Poſterity, ſtill remained Debtors, and were bound to pay. The Eviction or Deſtruction of a Thing mortgaged, don't extinguiſh the Debt, or diſcharge the Debtor.

Therefore the Empreſs-Queen, without the Conſent of the Lenders, made it a Condition of her yielding the Dutchies of *Sileſia* to his *Pruſſian* Majeſty, that he ſhould ſtand in the Place of the late Emperor, in reſpect of this Debt.

The Seventh of the Preliminary Articles, between the Queen of *Hungary* and the King of *Pruſſia*, ſigned at *Breſlau*, the 11th of *June*, 1742, is in theſe Words; " Sa Majeſté le Roi de " *Pruſſe* ſe charge du ſeul Payement de la Somme hypothéquée " ſur la *Sileſie*, aux Marchands *Anglois*, *ſelon le Contract ſigné à* " Londres, *le 7me de* Janvier, 1734-5."

This Stipulation is confirmed by the Ninth Article of the Treaty between their ſaid Majeſties, ſigned at *Berlin* the 25th of *July*, 1742.

Alſo renewed and confirmed by the ſecond Article of the Treaty between their ſaid Majeſties, ſigned at *Dreſden* the 25th of *December*, 1745.

In Conſideration of the Empreſs Queen's Ceſſion, his *Pruſſian* Majeſty has engaged to her, that he will pay this Money, *ſelon*

le Contract, and conſequently has bound himſelf to ſtand in the Place of the late Emperor, in reſpect of this Money, to all Intent and Purpoſes.

The late Emperor could not have ſeized this Money, as Reprizals, or even, in caſe of open War between the two Nations, becauſe his Faith was engaged to pay it, without any *Delay*, *Demurr*, *Deduction*, or *Abatement whatſoever*. If theſe Words ſhould not extend to all poſſible Caſes, he had plighted his Honour to bind himſelf, by any other Form of Words, more effectually to pay the Money; and therefore was liable at any Time to be called upon, to declare expreſsly, that it ſhould not be ſeized as Reprizals, or in caſe of War; which is very commonly expreſſed, when Sovereign Princes, or States, borrow Money from Foreigners. Therefore, ſuppoſing for a Moment, that his *Pruſſian* Majeſty's Complaint was founded in Juſtice, and the Law of Nations, and that he had a Right to make Reprizals in general, he could not, conſiſtent with his Engagements to the Empreſs-Queen, ſeize this Money as Reprizals. Beſides, this whole Debt, *according to the Contract*, ought to have been diſcharged in 1745. It ſhould, in reſpect of the private Creditors, in Juſtice and Equity, be conſidered, as if the Contract had been performed; and the *Pruſſian* Complaints don't begin till 1746, after the whole Debt ought to have been paid.

Upon this Principle of natural Juſtice, *French* Ships and Effects, wrongfully taken, after the *Spaniſh* War, and before the *French* War, have, during the Heat of the War with *France*, and ſince, been reſtored by Sentence of your Majeſty's Courts, to the *French* Owners. No ſuch Ships or Effects ever were attempted to be confiſcated, as Enemies Property here, during the War; becauſe, had it not been for the Wrong firſt done, theſe Effects would not have been in your Majeſty's Dominions. So, had not the Contract been firſt broke, by Non-Payment of the whole Loan in 1745, this Money would not have been in his *Pruſſian* Majeſty's Hands.

Your Majeſty's Guaranty of theſe Treaties is entire, and muſt therefore depend upon the ſame Conditions, upon which the Ceſſion was made by the Empreſs-Queen.

But

But this Reaſoning is, in ſome Meaſure, ſuperfluous; becauſe, if the making any Reprizals upon this Occaſion be unjuſtifiable, which we apprehend we have ſhewn, then it is not diſputed, but that the Non-Payment of this Money would be a Breach of his *Pruſſian* Majeſty's Engagements, and a Renunciation, on his Part, of thoſe Treaties.

All which is moſt humbly ſubmitted to your Majeſty's Royal Wiſdom.

GEO. LEE.
G. PAUL.
Jan. 18, 1753. *D. RYDER.*
W. MURRAY.

LIST

LIST of all the Pruſſian *Ships taken by* Britiſh *Armaments at Sea, during the ceeded upon, together with the Judgments given in the Admiralty Courts of* Great-

N°. of Ships.	Ships, which (if taken) were reſtored by the Captors, upon Examination, without either Party applying to a Court of Juſtice	Ships and Goods reſtored, with all Coſts and Damages attending the Capture.	Ships reſtored with Freight, according to the Bills of Lading, for ſuch Goods, which were found to be the Property of the Enemy, and condemned as Prize.	Ships and Goods reſtored, but without Coſts, from Circumſtances ariſing from the Caſe.
1	La Frederique Amitié, Capitaine *Sprenger*			
2				
3		L'Anne Elizabeth, Capt. *Daniel Schultz*, Coſts and Damages z801*l* 12*s*. 1*d*.		
4	La Catharine Chriſtine, Capit. *Frederick Berend.*			
5				
6				
7				
8				
9				
10				
11			L'Aigle D'Or, Capit. *Onne Arends.*	
12				
13				
14			La Dorothée Sophie, Capit *Piere Kettelhuth.*	
15			Les Deux Freres Capit. *Aug. Auguſtinus.*	
16	Le St. Jean*, Capit. *Jean Groſſe.*			
17	Le Jeune Tobie, Capit. *Paul Otto.*			
18				Le Petit David, Cap. *Michael Bugdahl.*

* *On the* 3*d of* February, *the Duke of* Newcaſtle *received a Letter from Mr.* Wolters, *His Majeſty's Agent at* Rotterdam, *incloſing the following Declaration:*

IN the Expoſition, which his *Pruſſian* Majeſty has publiſh'd, of ſuch Ships of his Subjects, as were taken by the *Engliſh* in the laſt War; I have obſerved, in the Liſt A, N°. 16, that the Ship *St. John, John Groſſe*, Captain,

is

*laſt War, as well thoſe detained for Examination only, as thoſe judicially pro-*Britain *thereupon, tallying with his* Pruſſian *Majeſty's Liſt marked* A.

	Ships and Cargoes reſtored, paying Coſts. In theſe Caſes, it either appeared, that the Ship had not the uſual Evidence of Property, according to the Cuſtom of the Sea; or from the Ship Papers, or Examination of the Crew, there appeared juſt Reaſon to preſume the Cargo to belong to the Enemy, and the Neuter Claimant, declined proving his Property, by ſtrict legal Evidence; and obtained Reſtitution, on the Faith of his own Affidavit; and, in theſe Caſes, Courts of Admiralty have always made the like Decrees.	Cargoes, or Part of them, condemned as contraband, and not now alledged, in Liſt A or B, to have been *Pruſſian* Property, and therefore were certainly Prize of War.	Appeals from the Admiralty Decrees.
2	———	Les Jumeaux, Capit. *Kruth.*	
5	La Dame Juliene, Capit. *Martin Preſt.*		
6	Le Frederick II. Roy de Pruſſe, Capit. *Chretien Schultz.*		
7	Le Vaiſſeau au bon Vent, Capit. *Michel Jurianſen.*		
8	———	Le Soleil D'or, Capit *Jacob Ridder*	
9	La Daageroud, Capit. *Martin Sperwien.*		
10	———	Le Fred. II. Roy de Pruſſe, Capit. *Chretien Schultz.*	
12	Les Deux Freres, Capit. *Jon Hallen.*		
13	———	Le Jeune André, Capit. *Henri Barckhorn.*	
18	———	———	Le Petit David Capit. *Michael Bugdahl.*

is therein mention'd, as having received ſome Damages to the Prejudice of the *Pruſſian* Owners. As the Fact is known to me, as I was the ſole Owner of her Cargo, I do hereby, as ſuch, teſtify the Truth, for the Satisfaction of all whom it may concern. And I cannot conceive how the *Pruſſian* Subjects

jects dare demand an Indemnification, which they have already more than received, as I am going to convince them.

In the Month of *November* 1747, I ordered the ſaid Ship to be freighted at *Bordeaux*, and loaded at *Libourne* with 158¾ Tons of White Wine. On the 1ſt of *December* following, that Ship put out to Sea; on the 11th of the ſaid Month, ſhe got as far as the *Downs*, where ſhe was met by an *Engliſh* Privateer, called the *Prince of Orange*, who ſent ſix of his Men on board the *Pruſſian* Ship, and had the *Pruſſian* Pilot brought on board him, with the Ship-Papers and Documents, in order to their being examined On the 12th of the ſaid Month, as ſhe lay at an Anchor, a great Storm aroſe from the W. S. W. which obliged the *Pruſſian* Captain, with the Conſent of his Crew, and of the ſix *Engliſhmen*, who were then on board his Ship, to cut his Cable, in order to drive off to Sea. The Ship got afterwards into *Browerſhaven* Inlet in *Holland*, on the 15th of the ſaid Month of *December*, without any other Damage, than the Loſs of Part of her Cable, and of an Anchor, and arrived at *Rotterdam* the 21ſt of the ſaid Month. All this is proved by the Declaration of both the Captain and his Crew, made, on the 4th of *January* 1748, before *Jacob Bremer*, Notary Publick in *Rotterdam*; and, afterwards, ſworn to, on the 6th of the ſaid Month, before the Commiſſioners of the Chamber of Maritime Affairs.

After the Ship was unloaded, the Captain gave in to me his Account for groſs Average; conſiſting of the following Articles:

1. For the Loſs of his Cable and Anchor.

2. For the Maintaining, during eight Days, the ſix Men, who had been put on Board his Ship by the *Engliſh* Privateer.

3. For a Paſſport, I procured for him, from the *Pruſſian* Envoy at the *Hague*, which coſt 3 or 4 Florins.

I paid him, for my Share, in that groſs Average 704 Florins, *Holland* Currency, over and above 105 Florins which I gave Captain *Groſſe* as a Preſent; and 10 Florins 10 Stivers, I gave as

as a Preſent to the Crew of his Ship: Beſides all this, it coſt me 20 Florins, or thereabouts, in *England*, which Meſſ^rs *Simond*, (Brothers) had diſburſed, by my Order, for the *Pruſſian* Pilot, who remain'd on board the Privateer, after the Storm had parted them.

Thoſe who underſtand the Navigation, and fitting-out of Ships muſt allow, that the *Pruſſian* Owners will find themſelves more than reimburſed for all their Pretenſions, by means of the 839 Florins 10 Stivers, *Holland* Currency, which I have paid them; and that they cannot, with any Foundation, make any other Demands.

All that I have alledged above, can be verify'd by authentic Vouchers (except the Preſents or Gratuities to the Captain and his Crew, amounting to 115 Florins 10 Stivers, for which I took no Receipt.) In Witneſs whereof I have ſigned this preſent Declaration. *Rotterdam, January* 30, 1753.

PETER TRAPAUD, Junr.

The above Declaration was ſigned in my Preſence; and the original Vouchers, quoted in the ſame, have been produced to me. Witneſs my Hand and Seal, *Rotterdam, January* the 30th, 1753.

(L. S.) *R. WOLTERS.*

LIST of all the Neutral Ships, taken by Britiſh *Ships during the laſt War, in whoſe* *ments given by his* Britannick *Majeſty's Courts of Admiralty thereupon,*

N°.	Ships Names.	If taken, releaſed, by the Captors, on Examination, without either Party applying to a Court of Juſtice.	In what Voyage taken.
1	La Cecile, Capitaine *Bois Swenſen.*	- - - - -	Cette *to* Altena - -
2	Le Nahring, Capit. *Chretien Tiedeman.*	- - - - -	Rochelle *to* Bourdeaux -
3	La Demoiſelle Jeane, Capit. *Joachim Peyn.*	- - - - -	Hambourg *to* Cadiz -
4	Le Carlſhavener Weifft, Capit. *Jean Holme.*	- - - - -	Hambourg *to* Cadiz -
5	L' Anne Elizabeth, Capit. *Chretien Mau.*	- - - - -	Hambourg *to* Cadiz -
6	Le Guſtave Prince Royal, Capit. *Barthow Muhl.*	- - - - -	Hambourg *to* Cadiz -
7	Le Jeune Benjamin, Capit. *Henry Newſchilling.*	- - - - -	Hambourg *to* Cadiz -
8	Le Prince Frederic, Capit *Jean Hartmann.*	- - - - -	Hambourg *to* Bilboa *and* Bayonne
9	Le Marie Joſeph, Capit. *Feurier Rogue.*	- - - - -	Hambourg *to* Cadiz -
10	L'Union, Capit. *Jean Struckmann.*	- - - - -	Bourdeaux *to* Hambourg
11	Le Neptune, Capit. *Sonder Heeren.*	- - - - -	Nants *to* Hambourg -
12	Le St. Paul *, Capit. *Gent Hinſichren.*	- - - - -	Nants *to* Hambourg -
13	La Couronne, Capit. *Pierre Claſſen.*	- - - - -	Nants *to* Hambourg -
14	La Demoiſelle Catherine, Capit. *Wilche de Vries.*	- - - - -	Rochelle *to* Altena - -
15	La Concorde, Capit *Claes Eichels.*	- - - - -	Rochelle *to* Hambourg -
16	La Feaune, Capit. *Gerhard Roger Altag.*	- - - - -	Charente *to* Hambourg -
17	L'Amitié, Capit. *Jean Quimann.*	- - - - -	Rochelle *to* Hambourg -

* On the 29th of *January*, Affidavits were exhibited in the Court of Admiralty, and Sentence prayed on the Part of the *Pruſſian* Claimant, and the Goods were decreed to be reſtored.

Cargoes the Subjects of Pruſſia *claim to have been intereſted; together with the Judgtallying with his* Pruſſian *Majeſty's* LIST *marked* B.

	Judgment as to Ship.	Judgment as to Goods.	For what Cauſe.	Appealed.
1	Reſtored	Reſtored - - - -	On Affidavits of the Property.	
2	Reſtored	Reſtored - - - -	On Affidavits of the Property.	
3	Reſtored	Reſtored - - - -	On Affidavits of the Property.	
4	Reſtored	Reſtored - - - -	On Affidavits of Property.	
5	Reſtored	Part reſtored - -	On Affidavits of Property.	
		Part condemned -	Want of Affidavits as to the Property.	
6	Reſtored	Part reſtored - -	On Affidavits of Property.	
		Part condemned -	Want of Affidavits of Property.	
7	Reſtored	Part reſtored - - -	On Affidavits of Property.	
		Part condemned -	Want of Affidavits of Property.	
8	Reſtored	Reſtored - - -	On Affidavit of Property.	
9	Reſtored	Reſtored - - - -	On the Ship-Papers.	
10	Reſtored	Part reſtored - -	On Affidavits of Property.	
		Part condemned -	Want of Affidavits of Property.	
11	Reſtored	Reſtored - - - -	On Affidavits of Property.	
12	Reſtored	Part reſtored - -	On Affidavits of Property.	
		The reſt ſtill depending	Want of Affidavits of Property.	
13	Reſtored	Reſtored - - - -	On Affidavits of Property.	
14	Reſtored	Part reſtored - -	On Affidavits of Property.	
		Part condemned -	Want of Affidavits of Property.	
15	Reſtored	Part reſtored - -	On Affidavits of Property.	
		Part condemned -	Want of Affidavits of Property.	
16	Reſtored	Part reſtored - - -	On Affidavits of Property.	
		Part condemned - -	Want of Affidavits of Property.	
17	Reſtored	Part reſtored - -	On Affidavits of Property.	
		Part condemned -	Want of Affidavits of Property.	

Continuation of a Liſt, &c.

N°.	Ships Names.	If taken, releaſed, by the Captors, on Examination, without either Party applying to a Court of Juſtice.	In what Voyage taken.
18	Le Jeune Prince Chretien, Capit. *Jean Corneille Leuwen.*	- - - - -	Marſeilles *to* Hambourg
19	La Dem^l. Marguerite, Capit. *Henri Bielenberg.*	- - - - -	Bourdeaux *to* Hambourg
20	Le Roxier, Capit. *Pierre Claſſen.*	- - - - -	Bourdeaux *to* Hambourg
21	La Marie Sophie, Capit *Chretien Gregerſen.*	- - - - -	Rochelle *to* Hambourg
22	L'Anne Sophie, Capit. *Henri Horn del'Volgaſt.*	Releaſed. - - -	Bourdeaux *to* Konigſberg
23	Le Hop de Danzig, Capit. *Conrade Harlach.*	- - - - -	Bourdeaux *to* Dantzick
24	La Jeune Jeane, *de Peterſbourg*, Capit. *Thomas Siefers.*	- - - - -	Bourdeaux *to* Hambourg
25	Le Gregoire *de Breme*, Capit. *Jacob Muller.*	- - - - -	Bourdeaux *to* Hambourg
26	La Jeune Catherine, Commandé par le Cap. *Kupper.* enſuite par le Cap. *Elker.*	Releaſed. - - -	Bourdeaux *to* Hambourg
27	Les Six Soeurs, *de Lubeck*, Capit. *Pierre Zaan*	- - - - -	Bourdeaux *to* Lubeck -
28	La Ste. Anne, *de Hambourg*, Capit. *Abraham Peterſon.*	- - - - -	Bourdeaux *to* Hambourg
29	Le Jeune Eldert, *de Hambourg*, Capit. *Gaſbet Auven.*	- - - - -	Roan *to* Hambourg -
30	Le Juſte Henri, *de Hambourg*, Capit. *Henri Elkes.*	- - - - -	Bourdeaux *to* Hambourg
31	L'Elizabeth, Capit. *Soeren Paterſon.*	- - - - -	Hambourg *to* Bourdeaux
32	La Demoiſelle Claire, Capit. *Herman Claſſen Prieſt*	- - - - -	Hambourg *to* Roan -
33	L'Adolphe Frederic, Capit. *Jonas de Haſpen.*	- - - - -	Marſeilles *to* Hambourg

tallying with the Pruſſian Liſt B.

	Judgment as to Ship.	Judgment, as to Goods.	For what Cauſe.	Appealed.
18	Reſtored	Reſtored - - - -	On Affidavits of Property.	
19	Reſtored	Part reſtored - -	On Affidavits of Property.	
		Part condemned - -	Want of Affidavits of Property.	
20	Reſtored	Reſtored - - - -	On Affidavits of Property.	
21	Reſtored	Part reſtored - - -	On Affidavits of Property.	
		Part condemned -	Want of Affidavits of Property.	
22				
23	Reſtored	Reſtored - - -	On Affidavits of Property.	
24	Reſtored	Reſtored - - -	On Affidavits of Property.	
25	Reſtored	Part reſtored - -	On Affidavits of Property.	
		Part condemned -	Want of Affidavits of Property.	
26				
27	Reſtored	Reſtored - - -	On Affidavits of Property.	
28	Reſtored	Part reſtored - -	On Affidavits of Property.	
		Part condemned -	Want of Affidavits of Property.	
29	Reſtored	Part reſtored - -	On Affidavits of Property.	
		Part condemned -	Want of Affidavits of Property.	
30	Reſtored	Part reſtored - -	On Affidavits of Property.	
		Part condemned -	Want of Affidavits of Property.	
31	Reſtored	Reſtored - - -	On Affidavits of Property.	
32	Reſtored	Reſtored - - -	On Affidavits of Property.	
33	Reſtored	Reſtored - - -	On Affidavits of Property.	

REMARKS

With regard to the Ship Anne Elizabeth, *Capt.* Daniel Shultz, *bound from* Bourdeaux *to* Amſterdam.

THE Merchants named at *London* for regulating the Damages and Coſts proceeding from her Detention, took into Conſideration, that ſhe was *Stetin* built, of about 200 Tons, navigated by 12 Men, including the Maſter, and allowed to the Ship,

For Mens Wages, during ſix Months Detention, Victualling, Wear and Tear, at 60*l.* -	£. 360		
For the Captain's *extra* Charges		10 : 10	
For Proteſt, *&c.* - -		5	
For ſtowing the Ship -		1	
For Pilotage and Light-Money		10 : 10	
For Mr. *Lamb*'s Commiſſion		10 : 10	
For ſundry Repairs made to the Ship	£. 522		
Deducted from 165*l.* new Work ⅓ Wear	£. 55		
Per ſeverals more	51		
	106		
- - -		416	
For Mr. *Spellerberg*'s Commiſſion on the Ship -		25	
For ditto diſburſed -		21 : 4	
For Notary *Willet* - -		4 : 15	
			864 : 9

For

For Loſs to the Owners in the Cargo was allowed,

For Mr. *Andre Loche*,

14 ¾ Fat white Wine, which coſt £. 6210 : 10, at 57 ½ *d.* with 5 *per cent.* Agio -	*Fl.* 3125 : 3		
Intereſt for 9 Months at 5 *per cent.*	117 : 4		
	3242 : 7		
And the neat Proceed, the Inſurance at *Amſterdam* deducted, is	1544 : 13		
Loſs	*Fl.* 1697 : 14		
at 11 *Fl.*		£. 154 : 5 : 10	

For *Adrian Floris Raap*,

4 Fats Wine coſt £. 1566, at 56 $\frac{13}{16}$, with 5 *per cent.* Agio	*Fl.* 778 : 9		
Neat Proceed	419 : 10		
	Fl. 358 : 19		
Per 800 *Fl.* Inſurance	32		
9 Months Intereſt	30		
at 11 *Fl.*	*Fl.* 420 : 19	38 : 5 : 4	

For *Michael Goris*,

5 Fats Wine, £. 1690 : 13. at 55 ¼	778 : 8		
Agio 5 *per cent.*	38 : 18		
	817 : 6		
Neat Proceed, with Deduction of Inſurance -	659 : 6		
	158		
Per Fl. 817 : 6. Intereſt for 9 Months -	30 : 13		
at 11 *Fl.*	*Fl.* 188 : 13	17 : 3	
		£. 209 : 14 : 2	

For

Brought over £. 209 : 14 : 2

For *Daniel La Fargue*,

16 ½ Fatts of Wine £. 6046 : 4 : 6.
at 56 ¼ *d.* and 5 *per cent.* Agio *Fl.* 3002 : 6
Neat Proceed, with the Insurance
deducted - - 1103 : 17

Fl. 1898 : 9
Intereſt for 9 Months on *Fl.* 3002 : 6.
at 5 *per cent.* - 112 : 12

at 11 *Fl.* *Fl.* 2011 : 1 £. 182 : 16 : 5

For *Aconjard de Gris*,

50 Fatts Wine *Fl.* 17625 : 12.
at 55 ¾ *d.* and 5 *per cent.* Agio 8598
Sold for *Fl.* 5447 : 18
Charges 2207 : 3

3240 : 5

Fl. 5357 : 15
Inſurance on *Fl.* 9000 a 3 ½ 315
Policy - 2
Intereſt *Fl.* 8598 for 9 Months 322 : 8

at 11 *Fl.* *Fl.* 5997 : 3 545 : 3 : 11

For *Herman Draveman*,

12 Fatts Wine £. 2962 at 55 $\frac{9}{10}$
with 5 *per cent.* - *Fl.* 1440 : 10
Neat Proceed 1091 : 3 ½

Fl. 349 : 6 ½
Intereſt *Fl.* 1440 : 10. for 9 Months 54 : ½

at 11 *Fl.* *Fl.* 403 : 9 36 : 13 : 4

£. 974 : 7 : 10

For

Brought over £. 974: 7:10

For Capt. *Daniel Shultz*,

100 Buſhels Cheſnuts £. 1442 £. *Sterl.* 61:11
Sold neat for - 24:10: 6
37: 0: 6

For Ditto,

15 Caſks of Wine £. 1023. £. *Sterl.* 85:10
Sold neat for - 42:16: 4
42:13: 8

For *P. Aſhe*,

13 ¼ Fatts Wine £. 5871:11. at 56 *d.* with 5 *per cent.* *Fl.* 2877: 1
Neat Proceed 1651: 4
Fl. 1225:17
Intereſt *Fl.* 2877:1 for 9 Months 107:18
at 11 *Fl.* *Fl.* 1333:15 121: 5

For *Jean Fonvicelles*,

150 Casks Muſcatelle £. 5280, at 56 ¾ and 5 *per cent.* 2621:17
Ditto - £. 4274:3:10
at 56 and 5 *per cent.* 2094: 7
22 ½ Fatts Wine, 120 Cheſts Prunes, 33 Caſks, 111 Sacks } Juniper £. 18929:6:6 at 56 and 5 *per cent.* 9275: 8
5 Fatts red Wine £. 1661:16
at 55 ½, and 5 *per cent.* 807: 1
10 ½ Fatts Ditto £. 4488:9
at 56, and 5 *per cent.* 2199: 7
Fl. 16998
Neat Proceed 10238:14
Fl. 6759: 6
Intereſt at 5 *per cent.* for 9 Months on *Fl.* 16998 - 637: 8
at 11 *Fl.* *Fl.* 7396:14 672: 8: 6
£. 1847:15: 6

Brought over		£. 1847: 15: 6
Mr. *Spellerberg*'s Commiſſion on the Coſt of the Cargo, amounting in the Whole to £. 79972 : 4 : 10 at 31½ *d.* £. 3498 : 15 : 9. at 2½	-	87: 9: 6
Damage on the Cargo	-	£. 1935: 5
Ditto on the Ship, as above	-	804: 9
Small Charges	- - -	1: 18: 1
		£. 2801: 12: 1

Which ſhews that in making up theſe Accounts of Damages at *London*, in the Court of Admiralty, the Opinion of impartial Merchants was followed, and due Attention paid to what ſtrict Juſtice required.

Extract from the Letters written by the *Dutch* Miniſters in *France* and *England*, to the Penſionary *J. de Witt*, at the *Hague*, from *An.* 1653 to 1667.

W. Boreel, *the* Dutch *Ambaſſador at* Paris, *to the Penſionary*, Dec. 26, 1653.

I Perceive well enough that *France* would go farther in regard to the Marine Treaty, which I am ſoliciting, if the War with *Spain* was not a Hindrance. They now maintain the Maxim, that their Enemies muſt in no Manner be protected or ſerved by any of the Ships belonging to the Subjects of their High Mightineſſes, for the carrying their Goods; on Peril that if any ſuch Goods be met with in *Dutch* Ships, they ſhall be made good Prize, and as ſuch be taken out and confiſcated: which however is departing from a Law they maintained in former Times, under *Francis* the Firſt, and *Henry* the Third, which was, *Que la Robe d'Ennemi confiſque celle d'Ami:* Whereas now in *Dutch* Ships the Goods belonging to their and other neutral Subjects ſhall not be confiſcated.

I have made all poſſible Endeavours to obtain, that free Ships ſhould make free Goods, but as yet without Succeſs.

From Penſionary De Witt's *Anſwer, dated the 8th* Jan. 1654.

I obſerve from yours of the 26th *December*, that notwithſtanding you uſed all your Endeavours, you could not obtain, that free Ships ſhould make free Goods; whereupon I cannot but believe that the *French* Miniſters muſt miſapprehend the Matter, or you explain it wrong; ſince in the Draughts of the Treaty ſent over, it ſtands clearly explained, that free Ships ſhall make free Goods; *Que les Navires qui traffiqueront & ſeront libres, & rendront auſſi toute leur charge libre, bien qu'il y eut dedans de la marchandiſe, même des Grains & Legumes appartenants aux Ennemis.*

From Mr. Boreel's *Letter, dated at* Paris, *the* 15*th* Jan. 1654.

It is true, that taking the Senſe of the Words from the firſt Article of the Proviſional Treaty, together with the 18th Article of this propoſed Treaty, they confirm clearly your Opinion. But they ſay that by the Words, *A free Ship ſhall make free Goods*, are only meant Goods of Friends, but not of Enemies: And in the ſame Manner they miſconſtrue the Declaration of the 29th of *May*, 1651, which the King made to me, and which is now ſubſiſting, and muſt ſubſiſt till we come to a nearer Treaty of Marine and Alliance. It ſays, *Le Roi fait defenſe*, &c. *de ne point prendre ni amener dans les Ports de France des Navires Hollandois chargés des Marchandiſes, quand même elles appartiendront aux Ennemis, pourvû qu'ils ne tranſportent pas des Troupes, Marchandiſes de Contrabande*, &c.

What can be clearer than theſe Words? But the People here interpret them as they pleaſe, and make Uſe of their Power in judging and executing: And although I complain continually, it is without Fruit and Redreſs.

By theſe Letters it appears clear enough, that the *French* firſt began to miſconſtrue the Senſe of the Words of free Ships making free Goods.

From Ambaſſador William Nieupoort's *Letter, dated at* London, *the* 12*th* May, 1656, *to the Penſionary* De Witt.

I am afraid that the Gentlemen here will not admit in the Treaty of Marine, the Rule of free Ships making free Goods, and *vice verſa*; nor agree to the Formularies of Paſſports propoſed: However, I ſhall uſe my beſt Endeavours towards it, and as ſoon as I can obtain any Thing from them upon Paper, I ſhall ſend it over.

From a Letter of the Penſionary, dated the 26*th* May, 1656, *to* William Nieupoort, *at* London.

Their High Mightineſſes, immediately after having received the Draughts ſent of a Marine Treaty, gave it to the Commiſſaries, who, upon taking it into Conſideration, quickly diſ-

diſcovered that the principal Point whereupon this Treaty ſhould be built which is to prevent unjuſt Searches when they meet at Sea, *viz.* " That free Ships make free Goods," was left out; and it is impracticable for the *Dutch* to agree to it in the Manner it is propoſed. Wherefore, *&c.*

From a Letter of the Penſionary, dated the 23d Feb. 1657, to William Nieupoort *at* London.

And I can aſſure you, that, if by concluding a Marine Treaty their High Mightineſſes can only obtain the End propoſed in their laſt Reſolutions, tho' in what they moſt deſire, namely, that free Ships ſhall make free Goods, it ſhould remain deficient, it might take away ſome of the Animoſity, and prevent the Perſons at the Helm from harkening to any of the Advances made by *Spain*, and other Potentates, to their High Mightineſſes.

Which is enough to ſhew, that the great Penſionary *De Witt*, whilſt *Cromwell* governed in *England*, could not gain upon him his favourite Maxim, that free Ships ſhould make free Goods.

Extract from Sir *Leonine Jenkins'* Memoirs, who was Judge of the Court of Admiralty at *London.*

To the Lords Commiſſioners for Prizes.

Weſtminſter, 17 *Sept.* 1666.

My Lords,

THE *St. George* of *Hamburgh* was taken between three or four Leagues of the *Vlie*, plying in a contrary Wind, as the Maſter depoſes, her Courſe from *Hamburgh* to *Rouen*. Being brought into *Harwich*, I do not find that any of her Company was examined; which is an Omiſſion your Lordſhips, I doubt not, will think worth preventing for the future. The Maſter, who alone is come up hither, I have cauſed to be examined. He ſwears that the Ship and Lading do entirely belong to *Hamburgh*, that his Ship has not been in *Holland* theſe nine Years; that his Papers are all true, and his Company all free. His Sea-Brief makes likewiſe nine Burghers of *Hamburgh* to be Owners of this Ship; and I find her upon the firſt Liſt which that City gave in to his Majeſty, upon Occaſion of this War. The Bills of Lading found on board are 35 in all, and there are Atteſtations of the Oaths which the reſpective Proprietors have made before

fore their Magiſtrates, correſponding exactly with the ſeveral Particulars in the Bills of Lading; which Atteſtations are of more Weight and Credit, in that they were obtained before the ſetting-out of this Ship. The Cargo is Lead, Wool, Steel, Wire and Copper-ware; and they are not only *Hamburghers* (as the Maſter it ſeems apprehended) that are the Laders of this Ship, but there are others of *Breſlau*, *Bremen*, *Antwerp*, and *Dantzig*, that are made, in the Atteſtations, Proprietors of ſeveral Parcels of this Lading.

Upon Occaſion of theſe Atteſtations, I ſhall crave Leave to offer unto your Lordſhips, what has fallen not long ſince under my Obſervation. Thoſe *Hamburghers* (as there are ſome) who favour the *Engliſh* Trade, make no Difficulty (in order to obtain the Atteſtations in common Form) to ſwear, that thoſe very Goods, which *Engliſhmen* do buy in *Hamburgh* with their own Money, and which are to be delivered here in *England* upon the proper and ſole Account of *Engliſhmen*, as ſoon as they come to ſafe Port, do belong to the Laders, *i. e. Hamburghers*; and that no other Perſon can or ought to pretend to any Intereſt in them. The Way that they ſalve this Caſe of Conſcience (as I have ſeen them explain themſelves in their Letters) is, by taking the Riſk of the Goods upon themſelves while the Goods are at Sea and in Danger of the Enemy. And for ſo doing, they have ſo much *per Cent.* Yet this Riſk of theirs is ſo limited, that as it reſpects no other Danger of the Sea, but that from the Enemies of this Crown, ſo they are bound to no more but to uſe their utmoſt Endeavours and Intereſt to make out a Claim, the Loſs being the *Engliſhman*'s if the Sentence ſhould by violent and exorbitant Proceedings go againſt the *Hamburgher*.

It is not improbable, but that the *Dutch* and *French* have likewiſe ſuch Friends at *Hamburgh*, as will lend them their Names, and their Conſciences too, upon the like Terms. But the ſure Way to obviate the Fraud of ſuch mental Reſervations and Equivocations (for againſt downright Perjury there is no Fence, as long as Oaths are, and there muſt be ſomething or other, deciſive in Judgment) would be, as I do, with all Submiſſion poſſible to your Lordſhips, conceive, That the Senate would pleaſe to order all Deponents to be interrogated in ſuch a Form, as the King's

King's Proctor ſhall ſend hence to the Deputies for taking theſe Oaths; or elſe that ſuch Laders, as deſire a Benefit here from Atteſtations, ſhould ſatisfy his Majeſty's Miniſter in that Town touching their reſpective Properties. Yet I muſt not deny that this amounts to little more than what is already done, if I be truly informed by the Secretary of the *Hamburgh* Agent; for, letting him know that I deſired to learn from his Maſters, what the Solemnity and Circumſpection was, which the Deputies uſe at *Hamburgh* before they grant their Atteſtation under Seal; he writes unto me that every Man that obtains that Atteſtation ſwears explicitly, that none in Enmity with the King of *Great-Britain* has any Intereſt in the Goods, touching which he makes Oath.

Among the Laders, my Lords, I found two Names which I gueſſed to be *French*, and the Secretary who ſolicits this Buſineſs could not but acknowledge the Perſons (*Du Prié* and *Heron*) to be *Frenchmen* born. But the Salvo that he and the Shipper gave me upon Oath is, that *Du Prié* had lived in *Hamburgh* with his Wife and Family for above theſe 20 Years; and that the other had lived there likewiſe theſe 8 Years. Which regularly is ſufficient in Law to excuſe him, as I humbly conceive, from being ſubjected to the ſame Reprizals with the reſt of his Countrymen. The *Hamburghers* at leaſt do conceive ſo, for this Shipper ſwears, that he refuſed taking in *Heron's* Goods, till the Senate ſent a public Officer to let him know, that he was to trade for him as freely, as for any Burgher of their City. If this be true, it is a ſtrong Preſumption that the reſt of the Laders are, as their Atteſtations ſpeak them to be, in *bona fide*. I am, *&c.*

L. JENKINS.

From the *Corps Diplomatique du Droit de Gens.* Pag. 238. Tom. VII. P. II. $\frac{12}{22}$ *Août.*

TRAITE & Convention entre Guillaume III. Roi de la Grande Bretagne & les Seigneurs Eſtats Géneraux des Provinces-Unies, pour l'Union & le Concert de leurs Armes contre la France, et principalement pour interdire toute ſorte de Commerce ou Trafic avec les Sujets du Roi T. C. non ſeulement de la part de l'Angleterre & des Provinces-Unies, mais auſſi de la part des Sujets des autres Rois, Princes, ou Eſtats.

A Whitehall le $\frac{12}{22}$ *d'Août* 1689.

(Tiré de la Regiſtrature d'Eſtat de la Chancelerie de la Cour de ſa Majeſté Imperiale. Faſc. 23.)

D'AUTANT que le Roi Très-Chrêtien a declaré la Guerre aux Eſtats Géneraux des Provinces-Unies des Païs-Bas & autres Alliés du Roi de la Grande Bretagne, & le Roi de la Grande Bretagne l'ayant declarée au Roi T. C. il importe audit Seigneur Roi de la Grande Bretagne, & aux dits Seigneurs Eſtats Géneraux de faire le plus de dommage qu'il ſera poſſible à l'Ennemi commun, pour le reduire à une Paix juſte & raiſonnable, & à des Conditions qui pourront retablir le repos & la tranquilité de la Chrétienté: & comme pour cela il eſt neceſſaire qu'on employe toutes ſes Forces, & particulierement qu'on faſſe en ſorte que tout Commerce & Trafic avec les Sujets dudit Roi T. C. ſoit effectivement rompu & interdit, pour ôter audit Roi & à ſes Sujets les moyens de fournir à une Guerre, qui pourra autrement par ſa durée être très nuiſible, et cauſer une grande effuſion de ſang chrétien; & Sadite Majeſté de la Grande Bretagne & lesdits Siegneurs Eſtats Géneraux ayant, pour mieux y parvenir, ordonné à leurs Flottes de faire voile vers les coſtes de France & de bloquer tous les Ports, Havres, & Rades du dit Roi T. C.

I. Il eſt conclu et arreſté entre Sadite Majeſté de la Grande Bretagne, et lesdits Seigneurs Eſtats Géneraux, qu'il ne ſera pas permis aux Sujets dudit Roi, ni desdits Eſtats, avec leurs propres Vaiſſeaux ni avec les Vaiſſeaux d'aucun autre Royaume, Païs ou Eſtat, de trafiquer, ni de faire aucun Commerce avec les

les Sujets du Roi T. C. en manière quelconque ; ni ne pourront emmener dans les Ports ou Païs dudit Seigneur Roi, ou desdits Seigneurs Eſtats, ni dans aucun autre Païs, les Marchandiſes & Denrées des Païs & Terres de l'obéïſſance du Roi T. C., ni amener auxdits Païs & Terres aucunes Marchandiſes ou Denrées quelconques ſur peine de Confiſcation desdites Marchandiſes & Denrées & des Vaiſſeaux qui y ſeront employés.

II. Et comme pluſieurs Rois, Princes & Eſtats de la Chrêtienté ſont déjà en Guerre contre le Roi T. C. & qu'ils ont déjà defendu, ou defendront dans peu, tout Commerce avec la France, il eſt convenu entre Sadite Majeſté de la Grande Bretagne & lesdits Seigneurs Eſtats Géneraux, que ſi, pendant cette Guerre, les Sujets d'aucun autre Roi, Prince, ou Eſtat entreprendront de trafiquer ou de faire aucun Commerce avec les Sujets du Roi T. C., ou ſi leurs Vaiſſeaux & Batimens ſeront rencontrés faiſant voile vers les Ports, Havres, ou Rades, de l'obéïſſance dudit Roi T. C. ſous un ſoupçon apparent de vouloir trafiquer avec les Sujets dudit Roi, comme ci-deſſus, & ſi les Vaiſſeaux appartenants aux Sujets d'aucun autre Roi, Prince ou Eſtat, ſeront trouvés en quelque endroit que ce ſoit, chargés des Marchandiſes ou Denrées pour la France, ou pour les Sujets du Roi Très-Chrêtien, ils ſeront pris & ſaiſis par les Capitaines des Vaiſſeaux de Guerre, Armateurs, ou autres Sujets dudit Seigneur Roi de la Grande Bretagne & desdits Seigneurs Eſtats, & ſeront reputés de bonne Priſe par les Juges competans.

III. Il eſt conclu & arreſté que ledit Seigneur Roi de la Grande Bretagne, & leſdits Seigneurs Eſtats notifieront au plûtôt ce Traité & Accord à tous les Rois, Princes & Eſtats de l'Europe, qui ne ſont pas en Guerre contre la France, & que lesdits Rois, Princes & Eſtats ſoient en méme tems informés que ſi leurs Vaiſſeaux, ou Batiments de leurs Sujets, ſortis en Mer avant cette Notification, ſeront trouvés faiſant voile vers les Ports, Havres ou Rades de l'obeïſſance du Roi T. C. ils ſeront obligés par les Vaiſſeaux dudit Seigneur Roi de la Grande Bretagne, & deſdits Seigneurs Eſtats de rebrouſſer chemin inceſſamment ; & que ſi les Vaiſſeaux ou Batimens deſdits Rois, Princes ou Eſtats, ou de leurs Sujets, ſeront ren-

contrés faiſant voile deſdits Ports, chargés des Marchandiſes, ou Denrées de France, lesdits Vaiſſeaux ou Batimens ſeront obligés de s'en retourner auxdits Ports, & d'y laiſſer leſdites Marchandiſes & Denrées, à peine de Confiſcation; & qu'en cas que les Vaiſſeaux ou Batiments deſdits Rois, Princes, & Eſtats, ou de leurs Sujets, ſortis en Mer après ladite Notification, ſeront trouvés faiſant voile vers les Ports, Havres, ou Rades de l'obéïſſance du Roi T. C. ou des Ports dudit Roi, ils ſeront ſaiſis & confiſqués avec leurs Marchandiſes & Denrées comme de bonne Priſe: & quant aux Princes & Alliés, qui ſont déjà en Guerre contre la France, il eſt auſſi arreſté & convenu que Notification leur ſera donnée au plûtôt de ce que deſſus, & qu'ils ſoyent en même tems priés de vouloir concourir à des moyens ſi neceſſaires à l'interêt commun, & de donner & faire executer des Ordres qui tendent à la même fin.

Ce preſent Traité ſera ratifié par Sa Majeſté & lesdits Seigneurs Eſtats Généraux, & les Ratifications ſeront échangées dans l'eſpace de ſix Semaines, ſi ce n'eſt qu'un Traité d'une Alliance offenſive & defenſive entre Sa Majeſté & lesdits Seigneurs Eſtats Généraux ſoit conclû & ſigné avant l'expiration de ce Terme, auquel cas ce preſent Traité y ſera compris & confirmé. Cependant il eſt arreſté, & convenu qu'on ne laiſſera pas de faire executer de part & d'autre, tous & chacun les Articles de ce Traité, ponctuellement & de bonne foi, de même que ſi les Ratifications étoient deja échangées. Fait à Whitehall le $\frac{12}{22}$ Jour d'Août 1689.

(L.S.) Carmarthen P.
(L.S.) Halifax C. P. S.
(L.S.) Shrewſbury.
(L.S.) Nottingham.
(L.S.) T. Wharton.

(L.S.) H. Schimmelpenning van der Oye.
(L.S.) N. Witzen.
(L.S.) W. de Naſſau.
(L.S.) Arnaut van Citters.
(L.S.) E. de Weede.

Arti-

Article ſeparé.

IL a été convenu de part & d'autre que Notification ſera donnée au plûtôt de ce qui eſt contenu dans ce Traité, non ſeulement aux Miniſtres des Rois, Princes & Eſtats intereſſés qui ſe trouveront auprès de ſa Majeſté & deſdits Seigneurs Eſtats Généraux, mais auſſi à ceux qui ſont aux Cours Etrangeres auprès des Rois, Princes & Eſtats reſpectivement; & de plus, il a été arreſté qu'en cas que l'une ou l'autre Partie vint à être incommodée ou troublée à cauſe de l'execution du preſent Traité ou d'aucun Article d'icelui, Sa Majeſté Britannique & les Hauts & Puiſſants Seigneurs Eſtats promettent & s'obligent de ſe garantir l'un l'autre à cet égard.

The END of the FIRST VOLUME.

APPENDIX.

WE mentioned in the preceding *Eſſay on Inſurances*, Pag. 29. a famous Cauſe that was tried before the Houſe of Lords in *February* 1754. In the Courſe of this Trial, in which the Honour of the Judges was thought to be concerned, it was argued with great Learning, for two Days, wherein conſiſts the Difference between Inſuring on a Ship at Intereſt or no Intereſt, and Inſuring on a Ship valuing her at a certain Sum without any Account to be given of that Value. The two following States of the Caſe had been printed and delivered to their Lordſhips for their Information.

George Fitz-Gerald, *of* London, *Merchant*, *ſurviving Partner of* George Fitz-Gerald *the elder*, } Plaintiff in Error.

Charles Pole, *of* London, *Merchant*, } Defendant in Error.

The CASE of the Plaintiff in Error.

PEter Joyce, a Mariner, being a Part-owner of One Moiety of a Ship called the *Goodfellow* Privateer, together with the other Owners, fitted her out in a warlike manner, to cruize againſt his Majeſty's Enemies; and obtained a proper Commiſſion for that Purpoſe from the Lords of the Admiralty: Mr. *Joyce*, being himſelf the Maſter of the Ship, and abroad, employed Meſſieurs *George Fitz-Gerald*, Uncle and Nephew, and Partners, to make an Inſurance for his Intereſt and Uſe: They accordingly procured a Policy of Inſurance for 1000 *l.* particularly ſet forth hereafter, to be ſigned by ſeveral Under-writers, among whom the Defendant *Charles Pole* under-wrote for 100 *l.* on the 31ſt *Auguſt* 1744.

A. April 1744. The Commiſſion as Privateer.

Mr. *Geo. Fitz-Gerald* the elder died in *March* 1743; and the Right of Action on this Policy ſurvived to Mr. *George Fitz-Gerald*, the now Plaintiff.

The Purpoſe for which the *Goodfellow* Privateer was fitted out, and employed, during the Time for which the Inſurance was made, being, on the 14th Day of *June* 1744, totally defeated by a Mutiny of the Sailors on board, their Deſertion from her, and Carrying off the Fire-arms belonging to the Ship;

Action brought. Hilary Term, 1748.

The Plaintiff, in *Hilary* Term 1748, on the Behalf, and for the Uſe, of *Peter Joyce*, brought an Action of the Caſe, in the Court of King's-Bench, againſt the Defendant *Charles Pole*; in which he declares as follows;

Declaration

WHereas on the Thirty-firſt Day of *Auguſt* in the Year of our Lord One thouſand Seven hundred and Forty-four, the ſaid *George* the elder, and *George* the younger, whom the ſaid *George* the younger hath ſurvived, were Partners together in the way of Trade and Merchandize, to wit, at *London* aforeſaid, in the Pariſh of *St. Mary Le Bow*, in the Ward of *Cheap*; and the ſaid *George* the elder, and *George* the younger, being ſo Partners together, on the ſame Day and Year, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, according to the Cuſtom of Merchants, cauſed to be made a certain Writing, or Policy of Inſurance; purporting thereby, and containing therein, That the ſaid *George* the elder, and *George* the younger, by the Names of *George Fitz-Gerald*, and Company, as well in his own Name, as for and in the Name and Names of all and every other Perſon or Perſons to whom the ſame did, might, or ſhould, appertain, in Part, or in All, did make Aſſurance, and cauſeth himſelf and them, and every of them, to be inſured, loſt or not loſt, *at and from* Jamaica, *to any Ports and Places where and whatſoever, at Sea or Shore, a cruiſing from Port to Ports, and Place to Places, for and during the Term and Space of Four Calendar Months*, upon the Body, Tackle, Apparel, *Ordnance, Munition, Artillery, Boat*, and other Furniture, of and in the good Ship or Veſſel called the *Goodfellow* Privateer, whereof was Maſter, under God, for that preſent Voyage, *Peter Joyce*, or whoſoever elſe ſhould go for Maſter in the ſaid Ship, or by whatſoever other Name or Names the ſame Ship, or the Maſter thereof, was or ſhould be named or called; beginning the Adventure upon the ſaid Ship, *&c. from and immediately following the Fourteenth Day of* June *then laſt*; *and ſo ſhould continue and endure* until the ſaid Ship, with all her ſaid Tackle, Apparel, *&c.* ſhould be arrived at any Ports and Places where and whatſoever,

The Policy.

ſoever, a cruiſing from Port to Ports, and Place to Places, *for and during the Term and Space of Four Calendar Months*, commencing as above-written, without Prejudice to that Inſurance; the ſaid Ship, *&c.* for ſo much as concerned the Aſſured, was and ſhould be valued (One Half-part of the Ship) at One thouſand Pounds Sterling, without further Account to be given by the Aſſured for the ſame. Touching the Adventures and Perils which they the Aſſurers were contented to bear, and did take upon them, in that Voyage they were, of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Countermart, Surpriſals, Takings at Sea, Arreſts, Reſtraints, and Detainments, of all Kings, Princes, and People, of what Nation, Condition, or Quality, ſoever, Barretry of the Maſter, and Mariners, and of all other Perils, Loſſes, and Misfortunes, that had or ſhould come to the Hurt, Detriment, or Damage, of the ſaid Ship, *&c.* or any Part thereof: And in caſe of any Loſs or Misfortune, it ſhould be lawful to the Aſſured, their Factors, Servants, and Aſſigns, to ſue, labour, and travail, for, in, and about, the Defence, Safeguard, and Recovery, of the ſaid Ship, *&c.* or any Part thereof, without Prejudice to that Inſurance; to the Charges whereof they the Aſſurers would contribute each one according to the Rate and Quantity of his Sum therein aſſured: And it was agreed by them the Inſurers, That that Writing, or Policy of Aſſurance, ſhould be of as much Force and Effect as the ſureſt Writing, or Policy of Aſſurance, theretofore made in *Lombard-ſtreet*, or in the *Royal Exchange*, or elſewhere in *London:* And ſo they the Aſſurers were contented, and did thereby promiſe and bind themſelves, each for his own Part, their Heirs, Executors, and Goods, to the Aſſured, their Executors, Adminiſtrators, and Aſſigns, for the true Performance of the Premiſes; confeſſing themſelves paid the Conſideration due unto them for that Aſſurance by the Aſſured, at and after the Rate of Twenty Guineas *per Cent.* And in caſe of Loſs (which God forbid!) the Aſſured to abate but Two Pounds *per Cent.* the Aſſurers being *free from all Average*; as by the ſaid Writing, or Policy of Aſſurance, it doth and may more fully appear: Of which ſaid Writing, or Policy of Aſſurance, ſo made, as aforeſaid, he the ſaid *Charles*, afterwards, to wit, on the ſaid Thirty-firſt Day of *Auguſt*, in the ſaid Year of our Lord One thouſand Seven hundred and Forty-four, at *London* aforeſaid, in the Pariſh and

Ward aforeſaid, had Notice; and thereupon he the ſaid *Charles*, afterwards, to wit, on the ſame Day and Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, in Conſideration that the ſaid *George* the elder, and *George* the younger, at the ſpecial Inſtance and Requeſt of the ſaid *Charles*, had undertaken, and then and there faithfully promiſed the ſaid *Charles* to perform and fulfil every thing in the ſaid Writing, or Policy of Aſſurance, mentioned on their Parts and Behalfs to be performed and fulfilled: and had then and there paid to the ſaid *Charles* Twenty Guineas as a Reward for the Aſſurance of One hundred Pounds upon the ſaid Premiſes mentioned and contained in the ſaid Writing, or Policy of Aſſurance; he the ſaid *Charles* undertook, and then and there faithfully promiſed the ſaid *George* the elder, and *George* the younger, that he the ſaid *Charles* would become, and he did then and there become, an Aſſurer to the ſaid *George* the elder, and *George* the younger, for the Sum of One hundred Pounds, on the Premiſes mentioned in the ſaid Writing, or Policy of Aſſurance; and that he the ſaid *Charles* would perform and fulfil every thing in the ſaid Writing, or Policy of Aſſurance, contained to be performed on his the ſaid *Charles's* Part and Behalf, as ſuch an Aſſurer, as to the ſaid One hundred Pounds by him ſo aſſured; and then and there ſubſcribed the ſaid Writing, or Policy of Aſſurance, for the Aſſurance of the ſaid One hundred Pounds: And the ſaid *George*, the now Plaintiff, further ſaith, The ſaid Inſurance, ſo made by the ſaid *George* the elder, and *George* the younger, as aforeſaid, was made for and on account of, and in Truſt for, and for the Uſe and Benefit of, *Peter Joyce*; *and that the Intereſt which the ſaid* Peter Joyce, *at the Time of making the ſaid Inſurance, as aforeſaid, and during the ſaid Cruize and Voyage hereafter mentioned, had in the ſaid Ship, being a Privateer, amounted to a large Sum of Money, to wit, Two thouſand Pounds, and upwards*; and that the ſaid Ship, on the ſaid 14th Day of *June*, in the ſaid Writing, or Policy of Aſſurance, mentioned, in the ſaid Year of our Lord One thouſand Seven hundred and Forty-four, being at *Jamaica* aforeſaid, in Parts beyond the Seas, in good Safety, ſet ſail and departed from thence in and upon her ſaid intended Voyage a cruiſing, according to the Intention of the ſaid Writing, or Policy of Aſſurance; and, from and after the ſaid Fourteenth Day of *June*, was a cruiſing from Port to Ports, and Place to Places, until the ſaid Ship

Ship afterwards, and within the ſaid Four Calendar Months, commencing from the ſaid Fourteenth Day of *June*, to wit, on the Twenty-third Day of *September*, in the ſaid Year of our Lord One thouſand Seven hundred and Forty-four, then ſailing upon the high Seas, and at a great Diſtance from *Jamaica* aforeſaid, and, proceeding in her ſaid Voyage, was, in a mutinous manner, by Force and Arms, againſt the Will of the then Maſter and Officers of the ſaid Ship, ſeized, taken, reſtrained, and detained, by the greateſt Part of the Mariners then on board her; and the Command, Direction, and Government, thereof, were taken from the ſaid Maſter; and the ſaid Ship was not permitted to ſail and proceed in her ſaid Voyage a cruiſing any longer; but was then and there, contrary to and againſt the Will of the ſaid Maſter and Officers, by the ſaid Mariners, in a mutinous manner, carried back again to *Jamaica* aforeſaid; where the ſaid Mariners afterwards, to wit, on the Thirtieth Day of the ſame *September*, being then and there arrived with the ſaid Ship, *againſt the Will of the ſaid Maſter and Officers, ran away from the ſaid Ship, with the Boats belonging to the ſame Ship, and totally quitted and deſerted her*; whereby, and *by means whereof, the ſaid Ship did not, nor could not, perform her ſaid Voyage a cruizing, for and during the ſaid Four Calendar Months*, according to the Intention of the ſaid Writing, or Policy of Aſſurance; but, from the Time of Taking, Seizing, and Detaining, of the ſaid Ship, as aforeſaid, for and during the Reſidue of the ſaid Four Calendar Months then to come and unexpired, was totally diſabled to perform the ſame; whereby the Owners and Proprietors of the ſaid Ship totally loſt all Profit, Benefit, and Advantage, that might have accrued to them in and from the ſaid Cruize during the Reſidue of the ſaid Four Calendar Months: Of all which Premiſes the ſaid *Charles Pole* afterwards, to wit, on the Firſt Day of *May*, in the Year of our Lord One thouſand Seven hundred and Forty-five, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, had Notice; and was then and there requeſted by the ſaid *George* the elder, and *George* the younger, to pay to them Ninety-eight Pounds, Parcel of the ſaid One hundred Pounds; deducting Two Pounds, Reſidue thereof, in reſpect of the ſaid Loſs which the ſaid *Charles*, according to the Form and Effect of the ſaid Writing, or Policy of Aſſurance, and of his ſaid Promiſe and Undertaking, then and there

there ought to have paid to the said *George* the elder, and *George* the younger.

There were Two other Counts in the Declaration, which, being found for the Defendant, are not material.

To this Declaration the Defendant pleaded the General Issue.

March 3. 1748. The Cause was tried at the Sittings in *London*, before the Lord Chief Justice, by a special Jury; when, at the Request of the Defendant's Counsel, *a special Verdict was found* to the Effect following, on the First Count:

Special Verdict. That the said *Charles*, on the said Thirtieth Day of *August*, in the Year of our Lord One thousand Seven hundred and Forty-four, did sign and subscribe the Policy of Assurance in the within Declaration mentioned, in the Words and Figures thereof, as stated before in the Declaration.

That the said Ship *Goodfellow* was safe at *Jamaica* the 14th Day of *June* 1744; and sailed from thence the same Day upon the Cruize in the Policy before-mentioned; and that the said Ship was an *English* Privateer, and duly commissioned as such by the following Commission duly obtained for that Purpose, and granted out of the High Court of Admiralty of *Great Britain*; and find the Commission *prout*.

And the said Jurors, upon their Oath, further say, That, on the Tenth Day of *June* 1744, the said Ship *Goodfellow*, in her said Cruize, met with and took a *French* Ship called
with Money and Goods on board, to the Value of Four thousand Two hundred Pounds Sterling, as a Prize; and that afterwards, to wit, upon the 31st Day of *August* following, *Peter Joyce*, the Captain of the said Ship *Goodfellow*, being, thro' Illness, unable to continue in the Command of the said Ship *Goodfellow*, quitted the said Ship, with the Consent of all the Crew thereof; and the First Lieutenant *John Hussey* was, by joint Consent of the said Captain, and all the Sailors and Mariners belonging to the said Ship, appointed Commander thereof: And the said Jurors, upon their said Oath, further say, That the said Ship *Goodfellow*, under the Command of said *John Hussey* (on whom the said Command would necessarily have devolved, in case of the Captain *Peter Joyce's* Death), was sailing on the said Cruize, for a Port or Place called the *River of Dogs*, to fetch Water, and afterwards, whilst the said Ship was neces-

neceſſarily ſailing for the ſaid *River of Dogs* aforeſaid, and within Four Months, *viz.* on the 23d of *September* One thouſand Seven hundred and Forty-four, the Crew of the ſaid Ship mutinied againſt the ſaid Captain *John Huſſey*, and his Officers; and, by Force, carried the ſaid Ship, againſt the Will of the ſaid Captain *John Huſſey*, and other Officers, who could not reſiſt the ſame, towards *Jamaica*; and, before her Arrival in Port there, cauſeleſly, againſt the Conſent of the ſaid Captain *John Huſſey*, ſeized the Boat, Fire-arms, and Cutlaſſes, and carried off the ſame, and deſerted the ſaid Privateer; by which the ſaid Voyage and Cruize was totally prevented and loſt for the Remainder of the ſaid Four Months, from the ſaid 23d Day of *September*: And the ſaid Jurors, upon their ſaid Oath, further ſay, That the ſaid Ship arrived at *Jamaica* upon the 29th Day of *September*, in the ſaid Year 1744, and was there in good Safety at and after the End of the Four Months aforeſaid; but was prevented by the ſaid Mutiny and Deſertion from further purſuing her ſaid Cruize: And the ſaid Jurors, upon their ſaid Oath, *further ſay, That the Inſurance upon the ſaid Ship* Goodfellow *was made for the Account of* Peter Joyce *the Owner, and alſo the Captain, for the former Part of the Cruize; and that the ſaid* Peter Joyce *had Intereſt in the ſaid Ship* Goodfellow *to the Amount of the Sum inſured*; but whether, upon the whole Matter by them the ſaid Jurors, in Form aforeſaid, found, the aforeſaid *Charles Pole* did untertake and promiſe in Manner and Form within written, or not, the ſaid Jurors know not, but pray the Advice of the Court thereupon: And if, upon the ſaid whole Matter by the ſaid Jurors in Form aforeſaid found, the ſaid Court ſhall be of Opinion, That the aforeſaid *Charles Pole* did undertake and promiſe in the Manner and Form within written; then the ſaid Jurors, upon their ſaid Oath, ſay, That the ſaid *Charles Pole* did untertake and promiſe in the Manner and Form as the ſaid *George Fitz-Gerald* within hath declared; and aſſeſs the Damages of him the ſaid *George Fitz-Gerald*, upon the Occaſion within written, beſides his Coſts and Charges by him, about his Suit in this behalf put, to Ninety-eight Pounds; and, for thoſe Coſts and Charges, to Forty Shillings: But if, upon the ſaid whole Matter by the ſaid Jurors, in Form aforeſaid, found, the ſaid Court ſhall be of Opinion, That the ſaid *Charles Pole* did not undertake and promiſe in Manner and Form as the ſaid

Charles

Charles Pole within, by his Plea, hath alledged; then the ſaid Jurors, upon their ſaid Oath, ſay, That the ſaid *Charles Pole* did not undertake and promiſe in Manner and Form as the ſaid *Charles Pole* within, by his Plea, hath alledged.

20 Oct 1744. Ship loſt.

This Ship was loſt in a Hurricane, which happened in *Jamaica* on the 20th of *October* 1744; and what was ſaved out of the Wreck did not anſwer the Expence of the Salvage: But as this Event happened Four Days after the Expiration of the Time limited in the Policy, it did not fall under the Conſideration of the Jury in this Action.

Judgment in B. R.

The Special Verdict came on to be argued in the Court of King's-Bench, in *Eaſter* Term 1750——When the Court of King's-Bench unanimouſly gave Judgment for the Plaintiff.

Reverſed in Exchequer-Chamber.

The Defendant thought proper to bring a Writ of Error in the Exchequer-Chamber; where the Cauſe was argued: And that Court was pleaſed to reſerve the Judgment of the Court of King's-Bench.

The Plaintiff hath brought his Writ of Error in Parliament againſt the Judgment pronounced in the Exchequer-Chamber—The General Errors are aſſigned; and the Defendant has pleaded there is no Error: And thereupon, Iſſue is joined.

It is found, that, by the Mutiny, *&c.* the Voyage and Cruize was totally prevented and loſt, for the Remainder of the Four Months, from the 23d *September*— It is *averred*, That *Peter Joyce* had Intereſt, during the Cruize in the Ship, and *found*, That he had Intereſt in the Ship, to the Amount of the Sum inſured:

That the Ship was in being at and after the End of the Four Months.

The General Queſtion is, Whether an Event has happened, upon which the Under-writers, by the Terms of the Policy, are to pay.

Tho' different Accounts are given of the Invention of Inſurances, yet they certainly were brought into Practice by Merchants, for the ſake of Trade, and in order to divide the Riſque.

1. Open Policies.

The Nature of the Contract originally was, That a ſpecified Voyage ſhould be performed, free from Perils: And, in caſe of Accident, the Inſurer was, for a certain Price, to bear the Trader harmleſs.

Hence

Hence it followed, that this Contract originally related to the Safety of a Voyage particularly deſcribed, in reſpect either of a Ship or Cargo; and that the Inſured could not recover beyond the Amount of his real Loſs: Therefore, without abandoning what was ſaved to the Inſurer, he could not recover the whole Value, except in caſe of a total Loſs.

A very inaccurate Form of this Contract was anciently uſed among Merchants, and drawn by themſelves.

It was brought into *England* by Perſons who came from Abroad, and ſettled in *Lombard-ſtreet*.

The Terms of this Contract, tho' very imperfectly penned, having acquired a Senſe from the Uſage of Merchants, the Form is followed to this Day; and every Policy refers to thoſe made in *Lombard-ſtreet*.

Hence, contrary to the general Rule, Parole Evidence is admitted to explain this Contract, tho' in Writing: And the Words are controuled, or liberally ſupplied, by the Intent of the Agreement, the Uſage of Merchants, and, above all, by judicial Determinations; which are the ſtrongeſt Evidence of the received Law of Merchants.

Upon theſe Policies, the Voyage, and not the bare Safety or Exiſtence of Ship or Cargo, is the Subject-matter of the Inſurance.

2. Valued Policies, free of Average and without Benefit of Salvage.

In Proceſs of Time Variations were made, by expreſs Agreement, from the firſt kind of Policy: It being troubleſome to the Trader to prove the Value of his Intereſt, and aſcertain the Quantity of the Loſs, he gave the Inſurer a higher Premium to agree to eſtimate his Intereſt at a preciſe Sum, and to give up his Claim to what might be ſaved; and the Inſured on the other Hand, waved any Claims of Contribution, in reſpect of Accidents, which might obſtruct, but not defeat the Voyage.

To recover upon this kind of Policy, the Inſured need only prove, that he had an Intereſt, without ſhewing the Value.

3. Policies, Intereſt or no Intereſt.

Caſes where it might not be proper for the Trader to diſcloſe the Nature of his Intereſt, introduced a third Kind of Policy; where the Inſurer diſpenſed with the Inſured having any Intereſt either in Ship or Cargo.

In theſe two laſt Kinds of Policies, valued *free from Average*, and Intereſt or no Intereſt; it is manifeſt, that the Performance

of the Voyage or Adventure, in a reaſonable Time and Manner, and not the bare Exiſtence of the Ship or Cargo, is the Object of the Inſurance; and ſo it has been often adjudged *. Many other Sorts of Inſurances upon other Sorts of Things, in the

Depaiba and Ludlow. Trinity, 5 Geo. I. In Common Pleas, 1720.

* Inſurance on a Hoy, uſed for a Packet-Boat from *Helvoetſluys* to *Harwich*, Intereſt or no Intereſt, without further Account---The Hoy, in her Voyage, was taken by a *Swediſh* Ship (tho' no War then betwen *Sweden* and *Great Britain*) after being Nine Days in the Cuſtody of the *Swediſh* Ship---The Hoy was retaken by an *Engliſh* Man of War---Carried to *Copenhagen*, and from thence to *Harwich*; where ſhe was at the Time of the Tryal---A Verdict was given for the Plaintiff, ſubject to the Opinion of the Court of *C. B.*---The Caſe was twice argued---Firſt by Civilians, and then by common Lawyars; and the Court gave Judgment for the Plaintiff, though the Ship was then in being at *Harwich*---The Queſtion was not, Whether the Property of the Ship was loſt by the Capture---But, Whether the Capture was a Peril inſured againſt, and had happened in the Voyage?

Parclay and Collier. Michaelmas, 17 Geo. II. B. R. 1744.

Inſurance on the Ship called the *Ludlow Caſtle* Man of War, from *Jamaica* to *England*, Intereſt or no Intereſt, *free of Average*, &c.---This Ship was, in her Voyage, compelled by Storms at Sea to put into *Antigua*; where Admiral *Knowles*, being in want of a Hulk for his Majeſty's Service, thought proper to convert the *Ludlow-Caſtle* to that Uſe---The Treaſure on board her was brought home in the *Scarborough*---The Inſured brought his Action; and tho' it appeared in Evidence, that the Ship was exiſting, and upon the Eſtabliſhment, is was determined, and, by a ſpecial Jury, a Verdict given accordingly, That the Voyage from *Jamaica* being loſt, the Plaintiff was intitled to recover; which he did.

Storey and Brown Trinity, 18 and 19 Geo II. 1746. B. R.

Inſurance on the *Sarah* Galley, at and from *London* to *Gibraltar*, and from thence to *London*; valued at the Sum inſured---This Ship was chartered from *London* for *Gibraltar*, and thence to the *Nore*, to receive Orders from the Freighter; and the Plaintiff was the ſole Owner of the Ship---The Ship arrived at *Gibraltar* in *June*; and was loaded with Wines, by the Freighter's Correſpondent, for her Return Voyage---At *Gibraltar* the Ship was ſeized by the *Saliſbury* and *Solebay* Men of War---The Maſter was turned out of Poſſeſſion, and ſeveral of the Sailors impreſſed---The Captors proceeded againſt the Ship and Cargo, as forfeited---The Ship was ordered to be reſtored; and was ſent, by the Freighter's Correſpondent, with a Cargo for *Dunkirk*; where ſhe was afterwards overſet, and loſt---An Action was brought by the Inſured; and tho' it was relied on for the Defendant, That the Ship was not totally loſt, but had been delivered, after the Capture, to the Agent of the Freighter, and by him ſent another Voyage; yet, as the Taking at *Gibraltar* was a Breach of the Policy in the Voyage, whereby the Return Voyage was prevented, a ſpecial Jury gave the Plaintiff a Verdict for a total Loſs; and he had Judgment accordingly.

Hanbury and King. Michaelmas, 19 Geo. II. B. R. 1746.

Inſurance on the *Anna*, at and from any Port, or Place, or Degree of Latitude, whereſoever the Ship might be on the 7th *May* 1741. to any Port, Place, and Degree of Latitude, until her Arrival at *London*, Intereſt or no Intereſt, *free of Average*, &c.---This Ship was a Tender to the Ships ſent to the *South-Sea* under the Command of Lord *Anſon*, and proceeded to the Iſland

of

the Nature of Wagers, or Bargains upon Contingences, have been introduced: Concerning which, the Agreement of the Parties is the Rule which governs:

That a Man ſhall live ſuch a Time—That one Man ſhall outlive another—That a Voyage ſhall be performed in a given Time—That a Ship ſhall arrive at ſuch a Port before ſuch a Fair—And every other Contingency may be inſured at a fixed Sum.

of *Juan Fernandez*; where ſhe was unloaded, and diſcharged the King's Service: But being in want of Stores to return to *England*, ſhe was ſold for the Uſe of the Fleet, by the Captain, for 300*l.*; for which he received a Bill on the Commiſſioners of the Navy, afterwards paid to the Plaintiff, the ſole Owner, together with the Freight, and all the Sailors Wages, to the Time of the Sale of the Ship---The Plaintiff and Owner alſo received 641*0l.* for the Freight of the outward-bound Voyage, and 259*0l.* as ſeven Months Freight; being the Time computed the Ship would have taken to return home. An Action was brought on the Policy; and altho' is was inſiſted on for the Defendant, That the Ship had not been deſtroyed by any Peril in the Policy, but ſold by the Owner for the Uſe of the Government; who had, for the Conveniency of the Service, diſpoſed of her as was thought fit; and that the Inſured had actually received a Price and Freight for her, as having performed her homeward-bound Voyage; ſo that, if there was any Loſs in Point of Value, it would only be a partial and average Loſs, which was expreſly not to charge the Inſurers; yet, upon all the above Facts (agreed between the Parties) as the Ship had been rendered incapable of performing the Service for which ſhe was fitted out; *viz.* attending the Fleet in the *South-Seas*, and home---The Plaintiff recovered a Verdict for a total Loſs, by a ſpecial Jury, agreeable to the Directions of the Court.

Inſurance on Goods in the *Durſley* Galley, Intereſt or no Intereſt, *free of Average*, &c. at and from *Jamaica* to *Briſtol*----The Ship was, in her Voyage, taken by a *Spaniſh* Privateer, and carried into a Port in *Spain*; where, after being kept Eight Days, ſhe was cut out by an *Engliſh* Privateer---The Inſured brought an Action on the Policy: The Inſurer inſiſted it was only an average Loſs; the Ship and Goods exiſting; and, by Statute, were to be reſtored to the Owners on Salvage: But it was determined; and, by a Special Jury, a Verdict given accordingly---That, notwithſtanding the Exiſtence of the Ship and Goods, yet the inſured Voyage being loſt, the Plaintiff was intitled to recover upon that Policy. Dean and Lee. Dicker. Hilary, 19 Geo. II 1746. B. R.

Inſurance on the *Diſpatch* Galley, Intereſt or no Intereſt, *free of Average*, &c. from *Jamaica* to *Hull*---In her Voyage ſhe was taken by a *French* Privateer, and carried to *Hamburgh*; and, after being 12 Days in the Hands of the Enemy, ſhe was retaken by *Hurſt*, Maſter of an *Engliſh* Ship, and brought to *London*; where ſhe was adjudged to be reſtored to the Owner, paying Salvage: The Owner ſold the Ship, and paid the Salvage---An Action being brought on the Policy, notwithſtanding the Ship had not been loſt, but was ſold by the Owner, it was held to have been a Loſs of the Voyage; and the Special Jury gave a Verdict accordingly. Whitehead and Pance. Michaelmas, 23 Geo. II 1749. B. R.

Many Merchants, with a View to their own Gain as well as the publick Service, deſiring to engage in fitting out Privateers; the great Expence of which conſiſts in the Outſet, the Victualing, the Stores, the Advance-money paid the Sailors, *&c.* they bethought themſelves whether they could divide the Riſque by Inſurance.

By the Firſt kind of Inſurances (open Policies) they could not do it; becauſe there was no Cargo: And the Value of the Ship was not the Meaſure of the Owner's Expence and Riſque.

They could not do it, according to the Second or third Kind, deſcribing any particular Voyage——The way, therefore, taken was, to inſure the Ship from all Perils, enumerated as a Privateer, *to cruize during a limited Time:* And ſuch Inſurance of Privateers is a modern Practice.

The very End of this Contract ſhews, that *the Capacity of the Ship to cruiſe notwithſtanding the Perils*, and not the Exiſtence, or the Property, of the Ship, at the End of the limited Term, is the Subject-matter of ſuch an Inſurance: And this is not only the obvious Meaning of the Parties to ſuch a Contract, but judicial Determinations have declared this to be the Senſe †. The Legiſlature has conſidered the Inſurance of Privateers

Pond and King. Hilary, 21 Geo. II. 1748. B. R.

† Inſurance for Three Months, from the 21 *December* 1744, upon the *Salamander* Privateer, to any Port or Places whatſoever, Intereſt or no Intereſt, *free of Average*, &c.---The Privateer was taken in the Second Month, by a *French* Man of War; who took the Captain, and moſt of the Privateer's Men, with the Commiſſion and Proviſions, on board his own Ship; and was carrying his Prize into *France:* On the 25th of *February* the Privateer was retaken by an *Engliſh* Ship, which took the *Salamander* with her on a Cruize, and then carried her into *Liſbon*; where ſhe remained---An Action being brought, on the Policy, a Special Verdict was found-----Upon arguing of which, the Court of King's-Bench unanimouſly gave Judgment for the Plaintiff: And againſt this Judgment no Writ of Error was ever brought.

Jenkins and Roberts againſt Mackenzie. Michaelmas, 23 Geo. II. 1749.

Inſurance on a Privateer for Two Months----In the Firſt Month ſhe was taken by the Enemy, and retaken by Admiral *Martin*; who, before the End of the Firſt Month, ſent her into *Briſtol*---The Privateer had received no Damage in the Engagement in which ſhe had been taken, but what might have been repaired without any great Expence, if ſhe could have been put into a Dock: But when ſhe arrived at *Briſtol*, the Docks were full, and Workmen ſo ſcarce, that ſhe could not be repaired before the Term in the Policy expired---The Plaintiffs brought their Action---The Defendant inſiſted, That the Ship exiſting (he not having inſured againſt the Fulneſs of Docks, and Scarcity of Workmen) he could not be liable for a Loſs:

vateers as beneficial; and plainly underſtood, that the Exiſtence of the Ship was not the Subject-matter of the Inſurance.

An Act, 19 *Geo.* II. which prohibits Inſurances, Intereſt or no Intereſt, provides, That Aſſurance on Private Ships of War, fitted out by any of his Majeſty's Subjects *(ſolely to cruize)* againſt his Majeſty's Enemies, may be made, by or for the Owners thereof, Intereſt or no Intereſt, *free of Average*, and without Benefit of Salvage to the Aſſurers. Aſſurance on private Ships of War may be made for the Owners.

There was no Occaſion to except the Caſe of Privateers, had the Exiſtence of the Ship been looked upon as the only Object; the Value of the Inſurance might have been confined to the Intereſt in the Ship.

Upon ſome of the Reaſons and Authorities, above referred to, as well as others, the Court of King's-Bench gave Judgment, in this Caſe, for the Plaintiff.

THE OBJECTIONS to the Judgment of the Court of King's-Bench, principally relied upon, ſeem to be theſe:

As the Ship exiſted at the End of four Months, nothing was to be paid; the Inſurers only undertaking, That *the Ship* ſhould not be totally loſt, or deſtroyed, within that Time. 1ſt Objection.

This Objection proves, That if, during the whole four Months, the Ship had been, by Force, turned into a Fire-ſhip, or a Tranſport; detained in Port by an Embargo; taken and kept by Privateers; arreſted and detained by Princes; ſo diſabled in a Storm the firſt Day, as not to be capable of going to Sea during the Time; provided the Owners had the Ship or her Hull again the Inſurers were to pay nothing; which, beſides contradicting ſo many Principles and Authorities, proves more than will be ſeriouſly contended for, and drives the Reſpondent to another Objection. Anſwer.

Suppoſe the Meaning was to inſure the Ship's Capacity to cruize (notwithſtanding the Perils mentioned) during four Months: 2d Objection.

a Loſs: Yet, as the Two Months Cruize was loſt by a Peril within the Policy, the Plaintiffs had a Verdict.

An Action upon the very ſame Policy now in queſtion againſt another Underwriter, in which the Plaintiff declared *verbatim*, *as in this Caſe*---Defended at the Tryal---A Verdict for the Plaintiff, by a Special Jury, agreeable to the Directions of the Court---Judgment accordingly---The Defendant brought a Writ of Error---But, deſpairing of Succeſs, ſuffered it to be non-proſſed, and paid the Money and Coſts Fitz-Gerald and Wainhouſe 23 Geo. II. 1749. K. B.

yet,

yet, unleſs ſhe was prevented by any of the Means mentioned in the Policy, during the whole Time, nothing is to be paid: For the Inſurance muſt be taken to be only againſt the entire Loſs of the whole Time: But here, in this Caſe, the Ship cruiſed Part of the Time.

Anſwer. At this Rate of arguing, if the Ship was ſafe at any Time on the 15th *June*, there never could be a Loſs afterwards: Tho' ſhe had been burnt, ſunk, or taken, on the 16th, the Inſurers would not be liable; which, beſides contradicting all the Authorities, in the Caſes of Privateers (in every one of which the Ship had cruiſed ſome time), reduces the Four Months to the Firſt Inſtant of that Time; and therefore is a flat Contradiction to the expreſs Terms of the Policy.

3d Objection. If the Ship's Capacity to cruize, and not the bare Exiſtence of the Ship, was the Thing inſured, it is not found, that *Peter Joyce* had any Intereſt in the Cruize, only that he was Owner of, and had Intereſt in the Ship, during the Cruize.

Anſwer. The Property of the Ship carries an Intereſt in her Capacity to cruize: A publick Law having given Prizes, taken by Privateers, to and among the Owner and Owners of ſuch Ship or Veſſel, and the ſeveral Perſons that ſhall be on board the ſame, in ſuch Shares and Proportions, as ſhall be agreed on with the Owner or Owners of ſuch Ship or Veſſel: And, to ſuppoſe the Owner to have parted with his whole Intereſt in the Uſe of the Ship, during the Cruize, and yet to have retained his Intereſt in the Privateer, during the Cruize, is to make an Intendment contrary to the Averment in the Declaration, and Finding of the Verdict; and to ſuppoſe a Caſe which never exiſted in Fact—That the Owner of a Ship letts her out, on Freight, to cruize as a Privateer.

The Parties on this Contract have agreed, and underſtood, That the Uſe of this Ship was attendant upon the Property: For they have inſured the Ship's Capacity to cruize, and valued it on the Ship.

There have been judicial Determinations, and one upon this very Policy, in favour of what the Plaintiff in Error contends for, unreverſed, and unappealed from—People probably have tranſacted Loſſes upon their Authority, and entered into Contracts

tracts, according to the Senſe judicially received——In mercantile Contracts, eſpecially for the ſake of Certainty, it is better to adhere to Deciſions, even if they were at firſt erroneous——All new Contracts are made in the Senſe of the judicial Determinations: And, ſuppoſing an Interpretation at firſt wrong, it becomes afterwards unjuſt to vary from it, and highly inconvenient.

Wherefore, and other Reaſons to be offered, the Plaintiff in Error hopes the Judgment of the Court of Exchequer-Chamber ſhall be Reverſed, and the Judgment of the Court of King's-Bench Affirmed.

W. MURRAY.
A. HUME-CAMPBELL.

George Fitzgerald, *ſurviving Partner of* George Fitzgerald *the Elder, deceaſed*, - - - - - } Plaintiff in Error.

Charles Pole, - - - - } Defendant in Error.

The CASE of the Defendant in Error.

IN the Month of *Auguſt* 1744, in the time of the late War, the Plaintiff, and his late Partner, as Agents, and for the Account, of one *Peter Joyce*, cauſed a Policy of Inſurance to be made out in the Name of *George Fitzgerald* and Co. whereby they cauſed themſelves to be inſured, loſt or not loſt, at and from *Jamaica*, to any Ports and Places where and whatſoever, at Sea or Shore, a cruiſing from Port to Ports, and Place to Places, for and during the Term and Space of Four Calendar Months, upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat, and other Furniture, of and in the Ship or Veſſel called the *Goodfellow* Privateer, the ſaid *Peter Joyce* Maſter; beginning the Adventure upon the ſaid Ship, *&c.* from and immediately following the 14th Day of *June* then laſt paſt; and ſo ſhould continue and endure until the ſaid Ship ſhould B.

ſhould be arrived at any Ports and Places where and whatſoever a cruiſing from Port to Ports, and Place to Places, for and during the Term and Space of four Calendar Months above-written, without Prejudice to that Inſurance: And the Ship, *&c.* for ſo much as concerned the Aſſureds, was thereby valued (One-half Part of the Ship) at 1,000 *l.* Sterling. The Perils inſured againſt, and ſpecified in the Policy, which is ſtated, *verbatim*, in the Special Verdict herein after-mentioned, are ſuch and the ſame as are uſually enumerated in Policies of Inſurance: And, by the Terms of the Policy, the Aſſured, in caſe of Loſs, were to abate 2 *l. per Cent.* and *the Aſſurers to be free from all Average.*

31 Aug. 1744. On this Policy the Defendant underwrote the Sum of one hundred Pounds; and ſeveral other Perſons, at the ſame Time, alſo underwrote it for different Sums; amounting, with the 100 *l.* underwrote by the Defendant, to the Sum of 1,000 *l.*

14 June 1744. The Ship ſailed from *Jamaica* on her Cruize; and

10 July 1744. Took, and made Prize of, a *French* Ship, with Money and Goods aboard to the Value of 4,200 *l.*

23 Sept 1744. The Crew of the Privateer, apprehending a Want of Water and Proviſions, inſiſted on returning home with her; and accordingly ſteered for *Jamaica:* And on

29 Sept. 1744. About a Fortnight before the End of the four Months, the Privateer arrived ſafe at her Port in *Jamaica*; and there continued in good Safety until after the End of the four Months:

From this Time till *Michaelmas* Term 1748, upwards of four Years, *Peter Joyce*, and his Agent the Plaintiff, acquieſced, without pretending there was any Loſs within the Terms of this Inſurance.

But, after this Acquieſcence, the ſaid *Peter Joyce*, or the Plaintiff, as his Agent, pretending, That ſuch the Crew's bringing back the Privateer into her Port, and the not continuing the Cruize till the End of the four Months, was ſuch an Interruption of the Cruize, as amounted to a total Loſs within the Policy, tho' the Ship itſelf was in Port, and in good Safety; did, on that Foundation, in *Michaelmas* Term 1748, bring an Action on the Policy, in the Name of the Plaintiff, as ſurviving Partner of *George Fitzgerald*, deceaſed, againſt the Defendant, to recover the Sum by him ſubſcribed, after a Deduc-

Michaelmas Term 1748

tion

tion of the 2 *l. per Cent.* as on a total Loſs: And, in order to this,

The Plaintiff, by his Declaration, alledged, that whereas, on the thirty-firſt Day of *Auguſt* in the Year of our Lord One thouſand ſeven hundred and forty-four, he the ſaid Plaintiff, according to the Cuſtom of Merchants, cauſed to be made a certain Writing, or Policy of Aſſurance; purporting thereby, and containing therein, that the ſaid Plaintiff, as well in his own Name, as for and in the Name and Names of all and every other Perſon or Perſons to whom the ſaid did, might, or ſhould appertain, in Part, or in all, did make Aſſurance, and cauſed himſelf and them, and every of them, to be inſured, loſt or not loſt, at and from *Jamaica*, to any Ports and Places where and whatſoever, at Sea or Shore, a cruiſing from Port to Ports, and Place to Places, for and during the Term and Space of four Kalendar Months, upon the Body, Tackle, Apparel, *Ordnance*, *Munition*, *Artillery*, *Boat*, *and other Furniture*, of and in the good Ship or Veſſel called the *Goodfellow* Privateer, whereof was Maſter, under God, for that preſent Voyage, *Peter Joyce*, or whoſoever elſe ſhould go for Maſter in the ſaid Ship, or by whatſoever other Name or Names the ſame Ship, or the Maſter thereof, was or ſhould be named or called; beginning the Adventure upon the ſaid Ship, *&c.* from and immediately following the Fourteenth Day of *June* then laſt; and ſo ſhould continue and endure until the ſaid Ship, with all her ſaid Tackle, Apparel, *&c.* ſhould be arrived at any Ports and Places where and whatſoever, a cruiſing from Port to Ports, and Place to Places, for and during the Term and Space of four Calendar Months, commencing as above written, without Prejudice to that Inſurance; the ſaid Ship, *&c.* for ſo much as concerned the Aſſured, was and ſhould be valued (one half Part of the Ship) at one thouſand Pounds Sterling, without further Account to be given by the Aſſured for the ſame. Touching the Adventures and Perils which they the Aſſurers were contented to bear, and did take upon them, in that Voyage they were, of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Countermart, Surpriſals, Takings at Sea, Arreſts, Reſtraints, and Detainments, of all Kings, Princes, and People, of what Nation, Condition, or Quality, ſoever, Barretry of the Maſter and Mariners, and of all other Perils, Loſſes, Declaration.

and Misfortunes, that had or ſhould come to the Hurt, Detriment, or Damage, of the ſaid Ship, *&c.* or any Part thereof: And in caſe of any Loſs or Misfortune, it ſhould be lawful to the Aſſured, their Factors, Servants, and Aſſigns, to ſue, labour, and travail, for, in, and about the Defence, Safeguard, and Recovery, of the ſaid Ship, *&c.* or any Part thereof, without Prejudice to that Inſurance; to the Charges whereof they the Aſſurers would contribute each one according to the Rate and Quantity of his Sum therein aſſured; And: it was agreed by them the Inſurers, that that Writing, or Policy of Aſſurance, ſhould be of as much Force and Effect as the ſureſt Writing, or Policy of Aſſurance, theretofore made in *Lombard-ſtreet*, or in the *Royal Exchange*, or elſewhere in *London:* And ſo they the Aſſurers were contented, and did thereby promiſe and bind themſelves, each one for his own Part, their Heirs, Executors, and Goods, to the Aſſured, their Executors, Adminiſtrators, and Aſſigns, for the true Performance of the Premiſes; confeſſing themſelves paid the Conſideration due unto them for that Aſſurance by the Aſſured, at and after the Rate of twenty Guineas *per Cent:* And in caſe of Loſs (which God forbid!) the Aſſured to abate but two Pounds *per Cent. the Aſſurers being free from all Average*; as by the ſaid Writing, or Policy of Aſſurance, it did and might more fully appear: Of which ſaid Writing, or Policy of Aſſurance, he the ſaid *Charles* afterwards had Notice; and thereupon, he the ſaid *Charles*, in Conſideration that the Plaintiff had undertaken, and then promiſed the ſaid *Charles*, to perform and fulfil every thing in the ſaid Writing, or Policy of Aſſurance, on his Part and Behalf to be performed and fulfilled; and had then and there paid to the ſaid *Charles* twenty Guineas, as a Reward for the Aſſurance of one hundred Pounds upon the ſaid Premiſes mentioned in the ſaid Writing, or Policy of Aſſurance; he the ſaid *Charles* undertook, and then and there faithfully promiſed the Plaintiff, that he the ſaid *Charles* would become, and he did become, an Aſſurer to the Plaintiff, for the Sum of one hundred Pounds; and then and there ſubſcribed the ſaid Writing, or Policy of Aſſurance, for the Aſſurance of the ſaid one hundred Pounds. And the Plaintiff further ſaith, the ſaid Inſurance was made for and on account of, and in Truſt for, and for the Uſe and Benefit of, *Peter Joyce*; and that the Intereſt which the ſaid *Peter Joyce*,

Joyce, at the Time of making the ſaid Inſurance, as aforeſaid, and during the ſaid Cruize and Voyage thereafter mentioned, had in the ſaid Ship, being a Privateer, amounted to a large Sum of Money, to wit, two thouſand Pounds, and upwards; and that the ſaid Ship, on the ſaid 14th Day of *June* One thouſand ſeven Hundred and forty-four, being at *Jamaica* aforeſaid, in Parts beyond the Seas, in good Safety, ſet ſail and departed from thence in and upon her ſaid intended Voyage a cruiſing, according to the Intention of the ſaid Writing, or Policy of Aſſurance; and, from and after the ſaid Fourteenth Day of *June*, was a cruiſing from Port to Ports, and Place to Places, until the ſaid Ship afterwards, and within the ſaid four Calendar Months, commencing from the ſaid Fourteenth Day of *June*, to wit, on the twenty-third Day of *September* in the ſaid Year of our Lord One thouſand ſeven hundred and forty four, then ſailing upon the high Seas, and at a great Diſtance from *Jamaica* aforeſaid, and proceeding in her ſaid Voyage, was, in a mutinous manner, by Force and Arms, againſt the Will of the then Maſter and Officers of the ſaid Ship, ſeized, taken, reſtrained, and detained, by the greateſt Part of the Mariners then on board her; and the Command, Direction, and Government, thereof, were taken from the ſaid Maſter; and the ſaid Ship was not permitted to ſail and proceed in her ſaid Voyage a cruiſing any longer; but was then and there, contrary to and againſt the Will of the ſaid Maſter and Officers, by the ſaid Mariners, in a mutinous manner, carried back again to *Jamaica* aforeſaid; where the ſaid Mariners afterwards, to wit, on the thirtieth Day of the ſame *September*, being then and there arrived with the ſaid Ship, againſt the Will of the ſaid Maſter and Officers, ran away from the ſaid Ship, *with the Boats belonging to the ſame Ship, and totally quitted and deſerted her*; whereby, and by means whereof, the ſaid Ship did not, nor could, perform her ſaid Voyage a cruiſing, for and during the ſaid four Calendar Months, according to the Intention of the ſaid Writing, or Policy of Aſſurance; but, from the Time of Taking, Seizing and Detaining, of the ſaid Ship, as aforeſaid, for and during the Reſidue of the ſaid four Kalendar Months then to come, and unexpired, was totally diſabled to perform the ſame; whereby the Owners and Proprietors of the ſaid Ship totally loſt all Profit, Benefit, and Advantage, that might have accrued

crued to them in and from the said Cruize during the said Residue of the said four Kalendar Months: Of all which Premises the said *Charles* had Notice; and was requested to pay to the Plaintiff Ninety-eight Pounds, Parcel of the said One hundred Pounds; deducting two Pounds, Residue thereof, in respect of the said Loss which the said *Charles*, according to the Form and Effect of the said Writing, or Policy of Assurance, and of his said Promise and Undertaking, then and there ought to have paid to the said Plaintiff.

There were, in the Declaration, two other Counts: And the Defendant pleaded, that he did make such Promises: Whereupon Issue was joined.

Tryal at the Sittings after Hilary Term 1748. Special Verdict

Upon the Tryal of the Action, the Second and Third Counts, in the Declaration, were found for the Defendant:

But, as to the first Promise and Undertaking, alledged in the Declaration, the Jury found specially, That the said *Charles*, on the said thirty-first Day of *August*, in the Year of our Lord One thousand seven hundred and forty-four, in the City of *London*, did sign and subscribe the Policy of Assurance in the Declaration mentioned, in the Words and Figures following; that is to say,

The Policy.

IN the Name of God, *Amen*. *George Fitzgerald*, and Company, as well in his own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in Part, or in all, doth make Assurance, and causeth himself and them, and every of them, to be insured, lost or not lost, *at and from* Jamaica, *to any Ports and Places where and whatsoever, at Sea or Shore, a cruising from Port to Ports, and Place to Places, for and during the Term and Space of four Calendar Months*, upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture, of and in the good Ship or Vessel called the *Goodfellow* Privateer, whereof is Master under God, for this present Voyage, *Peter Joyce*, or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship or the Master thereof, is or shall be named or called, beginning the Adventure upon the said Ship, *&c.* from and immediately following the

the fourteenth Day of *June* laſt; and ſo ſhall continue and endure until the ſaid Ship, with all her ſaid Tackle, Apparel, *&c.* ſhall be arrived *at any Ports and Places where and whatſoever, a cruiſing from Port to Ports, and Place to Places, for and during the Term and Space of four Calendar Months, commencing as above written*, without Prejudice to this Inſurance; the ſaid Ship, *&c.* for ſo much as concerns the Aſſured, is and ſhall be valued (*One half-Part of the* Ship) at one thouſand Pounds Sterling, without further Account to be given by the Aſſured for the ſame. Touching the Adventures and Perils which we the Aſſurers are contented to bear, and take upon us, in this Voyage, they are, of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Countermart, Surpriſals, Takings at Sea, Arreſts, Reſtraints, and Detainments, of all Kings, Princes, and People, of what Nation, Condition, or Quality ſoever, Barretry of the Maſter and Mariners, and of all other Perils, Loſſes, and Misfortunes, that have or ſhall come, to the Hurt, Detriment, or Damage, of the ſaid Ship, *&c.* or any Part thereof: And in caſe of any Loſs or Misfortune, it ſhall be lawful to the Aſſureds, their Factors, Servants, and Aſſigns, to ſue, labour, and travail, for, in, and about, the Defence, Safeguard, and Recovery, of the ſaid Ship, *&c.* or any Part thereof, without Prejudice to this Inſurance; to the Charges whereof we the Aſſurers will contribute each one according to the Rate and Quantity of his Sum herein aſſured: And it is agreed by us the Inſurers, that this Writing or Policy of Aſſurance ſhall be of as much Force and Effect as the ſureſt Writing, or Policy of Aſſurance, heretofore made in *Lombard-ſtreet*, or in the *Royal-Exchange*, or elſewhere, in *London*; and ſo we the Aſſurers are contented, and do hereby promiſe and bind ourſelves, each one for his own Part, our Heirs, Executors, and Goods, to the Aſſured, their Executors, Adminiſtrators, and Aſſigns, for the true Performance of the Premiſes; confeſſing ourſelves paid the Conſideration due unto us for this Aſſurance, by the Aſſured, at and after the Rate of twenty Guineas *per Cent*: And in caſe of Loſs (which God forbid!) the Aſſured to abate but two Pounds *per Cent. the Aſſurers being free from all Average.* In Witneſs whereof we the Aſſurers, have ſubſcribed our Names

Deſcription of the Voyage in the Policy.

The Aſſurers to be free from all Average.

Names and Sums. Aſſured in *London*, this 30th of *Auguſt* 1744.

100*l.* *Charles Pole*, One hundred Pounds Prem°: Received 31ſt *Aug.* 1744.

" And the ſaid Jurors further ſaid, That the ſaid Ship *Goodfel-*
" *low* was ſafe at *Jamaica* the 14th Day of *June* One thouſand
" ſeven hundred and forty-four; and ſailed from thence the
" ſame Day upon the Cruize in the Policy before-mentioned;
" and that the ſaid Ship was an *Engliſh* Privateer, and duly com-
" miſſioned as ſuch by the Lords Commiſſioners of the Admi-
" ralty of *Great Britain*.

" And the ſaid Jurors further ſaid, That during all the Time
" of the ſaid Cruize, there was open War carrying on by the
" King of *Great Britain* againſt the *French* King, and the King
" of *Spain*; and that, on the tenth Day of *July* One thouſand
" ſeven hundred and forty-four, the ſaid Ship *Goodfellow*, in her
" ſaid Cruize, met with a *French* Ship with Money and Goods
" on board, to the Value of *Four thouſand and two hundred*
" *Pounds Sterling*, *and made Prize thereof*; and that afterwards,
" to wit, upon the 31ſt Day of *Auguſt* following, *Peter Joyce*,
" the Captain of the ſaid Ship *Goodfellow*, being, thro' Illneſs,
" unable to continue in the Command of the ſaid Ship *Goodfellow*,
" quitted the ſaid Ship, with the Conſent of all the Crew there-
" of; and the Firſt Lieutenant thereof, *John Huſſey*, was, by
" joint Conſent of the ſaid Captain, and all the Sailors and Ma-
" riners belonging to the ſaid Ship, appointed Commander
" thereof: And the ſaid Jurors, upon their ſaid Oath, further
" ſaid, That the ſaid Ship *Goodfellow*, under the Command of
" the ſaid *John Huſſey* (on whom the ſaid Command would
" neceſſarily have devolved, in caſe of the ſaid Captain *Peter*
" *Joyce*'s Death) was ſailing on the ſaid Cruize, for a Port or
" Place called the *River of Dogs*, to fetch Water; and after-
" wards, whilſt the ſaid Ship was neceſſarily ſailing for the ſaid
" *River of Dogs*, as aforeſaid, and within the Four Months
" mentioned in the ſaid Policy, *viz.* on the Twenty-third Day
" of *September* One thouſand ſeven hundred and forty four, the
" Crew of the ſaid Ship mutinied againſt the ſaid Commander
" *John Huſſey*, and Officers; and, by Force, carried the ſaid
" Ship, againſt the Will of the ſaid Commander *John Huſſey*,
" and Officers, who could not reſiſt the ſame, back towards
" *Jamaica*;

" *Jamaica*; and, before her Arrival in Port there, cauſeleſly, " againſt the Conſent of the ſaid Commander *John Huſſey*, " ſeized the Boat, Fire-arms, and Cutlaſſes, belonging to the " ſaid Ship *Goodfellow*, and carried off the ſame, and deſerted " the ſaid Privateer; by which the ſaid Cruize was totally pre- " vented and loſt for the Remainder of the ſaid four Months, " from the ſaid twenty-third Day of *September:* And the ſaid " Jurors, upon their ſaid Oath, further ſaid, That the ſaid Ship " *Goodfellow* arrived at *Jamaica* upon the twenty-ninth Day of " *September* in the ſaid Year One thouſand ſeven hundred and " forty-four, *and was there in good Safety at and after the End* " *of the four Months aforeſaid*; but was prevented by the ſaid " Mutiny and Deſertion, as aforeſaid, from further purſuing " her ſaid Cruize: And the ſaid Jurors, upon their ſaid Oath, " further ſaid, That the Inſurance upon the ſaid Ship *Goodfellow* " was made for the Account of *Peter Joyce*, the Owner, and alſo " the Captain for the former Part of the ſaid Cruize; and that " the ſaid *Peter Joyce had Intereſt*, during all the Time of the ſaid " Cruize, *in the ſaid Ship Goodfellow*, to the Amount of the Sum " inſured: But whether, upon the whole Matter by them the " ſaid Jurors, in Form aforeſaid, found, the aforeſaid *Charles Pole* " did undertake and promiſe in Manner and *Form* aforeſaid, or " not, the ſaid Jurors know not; but pray the Advice of the " Court thereupon: And if, upon the whole Matter by them " the ſaid Jurors, in Form aforeſaid, found, the ſaid Court ſhall " be of Opinion, That the aforeſaid *Charles Pole* did undertake " and promiſe in Manner and Form aforeſaid; then the ſaid " Jurors, upon their ſaid Oath, ſay, That the ſaid *Charles Pole* " did undertake and promiſe in the Manner and Form as the ſaid " *George Fitz-Gerald* hath declared; and aſſeſs the Damages of " him the ſaid *George Fitz-Gerald*, upon the Occaſion, beſides " his Coſt and Charges by him, about his Suit in this behalf, " ſuſtained, to Ninety-and-eight Pounds; and, for thoſe Coſts " and Charges, to Forty Shillings: But if, upon the ſaid whole " Matter by the ſaid Jurors, in Form aforeſaid, found, the ſaid " Court ſhall be of Opinion, That the ſaid *Charles Pole* did not " undertake and promiſe in Manner and Form as the ſaid *Charles* " *Pole*, by his Plea, hath alleged; then the ſaid Jurors, upon their " ſaid Oath, ſay, That the ſaid *Charles Pole* did not undertake and " promiſe in Manner and Form as the ſaid *Charles Pole*, by his " Plea, hath alledged."

Upon

Eaſter Term 1750. Upon this Verdict the Court of King's-Bench, upon Argument, gave Judgment for the Plaintiff; upon which a Writ of Error was brought in the Exchequer-Chamber; and, after twice argueing the Caſe, the Judgment, by the unanimous Opinion of all the eight Judges of that Court, was reverſed.

Eaſter Term 1752.

Upon which Judgment of Reverſal a Writ of Error is brought in Parliament, to reverſe the Judgment of the Court of Exchequer-Chamber, and to affirm the Judgment of the Court of King's-Bench, upon a general Aſſignment of Error in the ſaid Judgment of the Court of Exchequer-Chamber.

But the Defendant hopes, the ſaid Judgment of the Court of Exchequer, reverſing the Judgment of the Court of King's-Bench, ſhall be Affirmed, for the following, among other,

REASONS:

I. The *Inſurer* being, by the Terms of the Policy, *free from all Average*, the Plaintiff could not be intitled to recover, but in caſe of a total Loſs; and the Ship being found by the ſpecial Verdict, to be in good Safety, at her proper Port, at and after the End of the four Months for which the Inſurance was made, there could be no ſuch Loſs.

II. *The Ship alone is inſured, and not the Cruize*; and to contend otherwiſe is not only contrary to the expreſs Words, and plain Meaning and Intention, of the Policy, by which the *Ship alone* is repeatedly expreſſed to be the Thing inſured; but it is alſo contrary to the Nature of an Inſurance; the Safety of the Ship itſelf, or of whatever elſe is the immediate Object of the Inſurance, being the only thing inſured; and not any uncertain Benefit which may ariſe to the Owner by means or in conſequence of it: Nor can any ſuch conſequential Benefit be properly the Subject-matter of Inſurance, as it is not capable of being eſtimated. But,

III. Suppoſing the Cruize, or the Benefit of the Cruize, or the free Uſe of the Ship for the Cruize, to be the Thing inſured; yet even of any of theſe there is no total Loſs; the *Ship* having actually cruiſed till within about a Fortnight of the whole Time, and having taken a rich Prize of the Value of 4,200*l.* Sterling. And,

IV. Sup-

IV. Suppoſing, as contended for by the Plaintiff, that the Cruize, or Benefit of the Cruize, or the free Uſe of the Ship for the Cruize, was the Thing inſured; and that what is found by the Verdict amounts to a total Loſs of any of theſe; yet it is not found, nor is it averred in the Declaration, that *Peter Joyce*, for whoſe Benefit the Inſurance was made, had any Intereſt in the Cruize, but only in the Ship itſelf; and to recover in an Action upon a valued Policy, the Plaintiff muſt aver an Intereſt in his Declaration, and prove it at the Tryal.

For theſe, and divers other Reaſons to be offered at the Hearing, it is humbly hoped, that the Judgment given for the now Defendant, the then Plaintiff in Error, by the Court of Exchequer-Chamber, ſhall be Affirmed, with Coſts.

R. Henley.
Tho. Sewell.

My Lord Chancellor, after having heard all that was alledged on both Sides, ſummed up the Whole, and gave his Opinion in Favour of the Defendant: And the following Decree paſſed in the Houſe of Lords:

Die Veneris 1° *Martii* 1754.

WHereas, by Virtue of his Majeſty's Writ of Error, returnable into the Houſe of Lords in Parliament aſſembled, a Record of the Court of Exchequer-Chamber was brought into this Houſe, the 18th Day of *December* 1753, wherein *George Fitz-Gerald* is Plaintiff, and *Charles Pole* Defendant; and Counſel having been heard as well on *Wedneſday* the 20th of *February* laſt, as on the *Thurſday* and *Friday* following, to argue the Errors aſſigned upon the ſaid Writ of Error; and the Judges who were ordered to attend "having been heard *ſeriatim*, "as well on *Wedneſday* laſt as this Day, to deliver their Opi- "nions, with their Reaſons, upon certain Points of Law to "them propoſed, and due Conſideration had of what was "offered on either Side in this Cauſe: It is Ordered and

" Adjudged by the Lords Spiritual and Temporal in Parliament aſſembled, That the Judgment given in the ſaid Court " of Exchequer-Chamber, reverſing a Judgment given in the " Court of King's-Bench, be, and the ſame is hereby, Affirmed; " and that the Record be remitted. And it is further Ordered, " That the Plaintiff in Error do pay, or cauſe to be paid, to the " Defendant in Error, the Sum of Five Pounds for his Coſts in " this Houſe."

ASHLEY COWPER, *Cler' Parliament'*

Some

Some Mercantile Obſervations on the preceding Tryal.

AS we know not what Particulars were alledged in the Pleadings before the Houſe of Lords, we ſhall take the Liberty to add here a few mercantile Remarks, which we hope will enable every body to judge rightly of the Matter:

Firſt, then, in our humble Opinion the chief thing neceſſary to the forming of a right Judgment of the Caſe was to ſhew wherein the Words of this Policy differed from thoſe of other Policies made at Intereſt or no Intereſt, on which, in Caſes ſomewhat like this, Inſurers had formerly been condemned to pay total Loſſes. For it appears to us, that when this Cauſe was firſt heard it was not ſufficiently explained to the Judge and the Jury, that although it is ſaid in this Policy that the Inſurers ſhould *be free of Average*, it is not ſaid therein that the Inſurance ſhould be *without Benefit of Salvage*; which Clauſe conſtitutes the main Difference between Policies made on Intereſt or no Intereſt, and thoſe made on real Intereſt; a Renunciation of the Salvage being never made in the latter. Hence on Ships inſured at Intereſt or no Intereſt once taken, although afterwards retaken, the Inſurers have been condemned to pay total Loſſes, becauſe they renounced the Benefit of Salvage. In Inſurances made at Intereſt or no Intereſt, free from Average, and without Benefit of Salvage (which, though they are very hazardous, high Premiums will tempt Inſurers to underwrite) the Words of the Policies clearly import, that ſuch Inſurances are to be underſtood merely as Wagers, that the Ships ſhall make the Voyages mentioned in the Policies, and the Inſurers ſhall have nothing to do with Averages or Salvages. If in the preſent Caſe the Policy had been made with this Condition, "not to have any Benefit of Salvage," probably the Court of Exchequer, conſidering the litteral Senſe of the Words, and what Deciſions had paſſed formerly on ſuch Policies, might have confirmed the Sentence given in the Court of the King's-Bench, condemning the Inſurers to pay a total Loſs; ſince the Ship for the Time the Mutineers were Maſters of her, might be eſteemed as loſt to the Owners, and the Inſurers had renounced the Salvage; though we cannot help ſaying, that we never could reconcile ourſelves to ſome Part of

the Doctrines upon which, in Tryals of this Nature, Verdicts have of late been given.

Secondly, With regard to the Caſe of *Pond* verſus *King*, cited by the Plaintiff's Counſel, where a Ship being taken, though afterwards retaken, the Inſurers were condemned to pay a total Loſs, we obſerve that in the printed Caſe it is only ſaid that it was an Inſurance on Intereſt or no Intereſt, free of Average, *&c.* ——and it is in this *&c.* left out, that we find a material Difference between that and the preſent Policy. For in *Pond*'s Policy, which ſtands at full Length in *Beawe's Lex Mercatoria* pag. 272, after the Words *to be free of Average*, follows *and without Benefit of Salvage*, which this Policy has not. We alſo find in ſome of the other Caſes of Intereſt or no Intereſt Policies, alledged here, that a Stop is made after the Words *free of Average*; and perhaps they might contain the other Condition alſo, *without Benefit of Salvage*; ſo that all thoſe Policies might differ from the preſent one, and prove nothing in its Favour.

Thirdly, Although the Act of Parliament, 19 *Geo.* II. permits, for the Encouragement of Privateering, Inſurances to be made on Privateers at Intereſt or no Intereſt, free of Average, and without Benefit of Salvage, it does not follow that all Policies on Privateers were made ſo, or are to be conſtrued as if theſe Conditions had been expreſſed in them.

The Plaintiff's State of the Caſe A ſays: "The general "Queſtion is, Whether an Event has happened upon which "the Underwriters by the Terms of the Policy are to pay?"

Now it muſt, we think, be allowed that ſomething did happen for which the Inſurers had made themſelves anſwerable, and that was the Barratry of the Mariners. For the Mutiny of the Mariners, and their actually taking the Command from the Maſter, was certainly Barratry; and the Ship, during the Time ſhe remained out of the Power of the Captain, might be conſidered as loſt to the Owners; but as the Mutineers carried her back to *Jamaica*, and there left her, and the Benefit of Salvage was not given up by the Inſurers, it was no total Loſs, and nothing elſe could be demanded, than what was proved to have been loſt by the Mutiny. Now as it appears that the Crew actually ran away, within the Term for which the Ship was inſured, with Part of her Fire-Arms and Boats, things expreſly mentioned in the Policy, and included in the Valuation of

the

the Ship, how much or how little ſoever this might amount to, it certainly was no Average, but a partial Loſs for which the Inſurers were liable to pay: And though we are ſenſible that the Inſurers had nothing to do with the Succeſs or Miſcarriage of the Cruize, yet, as it is well known to every Inſurer that the Amount of the Proviſions put on Board for the Uſe of the Voyage, and the Money advanced to the Sailors, are uſually included and inſured in the Valuation of the Ship, it is a queſtion with us, whether the Conſumption of the Proviſions by the Mutineers, whilſt they had the Command of the Ship, and neglected the Service of the Owners, ought not to be conſidered as a Loſs to the Owners, which the Inſurers were to make good? Thus much we have thought proper to alledge for and againſt the Plaintiff's printed Caſe.

As to the Defendant's printed Caſe B we obſerve, that one of the Reaſons alledged for affirming the Judgment of the Court of Exchequer, is, that the Inſurers being by the Terms of the Policy free from all Average, the Plaintiff could only be entitled to recover in Caſe of a total Loſs. But in our Opinion the Inference is not juſt: For the Stipulation to be free from Average did not make them free from the actual Loſſes ſuſtained by Barratry and Mutiny, which to our experimental Knowledge were never comprehended under the Word *Average*. Though inſerting a Clauſe in Policies on Privateers, not to be liable to bear any Loſſes reſulting from the Mutiny and Diſobedience of the Crews, may be a very prudent Conſideration for the Inſurers in Time to come, it was not done in this Caſe, where, by the Words *to be free of Average*, could only be meant that the Inſurers ſhould be free of all Damages reſulting from the Cruize, particularly what the Ship might ſuſtain either in attacking or being attacked, crowding Sail, or chaſing, and thereby loſing or breaking any thing, Damage ſuſtained by boarding, running foul of other Veſſels, receiving Shot in her Hull and Rigging *&c.* We make no doubt but that, if a ſeparate Demand had been made by the Inſured for the things run away with by the Mariners, the Inſurers would have paid it.

Miſinformation perhaps led the Inſured to try, whether this valued Policy would not have the ſame Effect as other Policies made on Intereſt or no Intereſt with the Conditions *to be free of Average*

Average, and without Benefit of Salvage, by Virtue whereof the Inſurers had, in a parallel Caſe, been condemned to pay a total Loſs; and it ſo happened that the Jury, miſunderſtanding the thing, on the firſt Hearing of this Cauſe in the Court of King's Bench gave their Verdict for a total Loſs.

But it ſeems the Inſurers were ſatisfied in their own Minds that the Caſes which had been alledged, and had miſled the Judge and the Jury, differed greatly from theirs, as has been ſhewn above. They therefore brought a Writ of Error in the Exchequer Chamber, where after twice arguing the Caſe, the Judgment, by the unanimous Opinion of all the eight Judges of that Court, was reverſed; whereupon a Writ of Error was brought in the Houſe of Lords, to reverſe the Judgment of the Exchequer Chamber. But inſtead of that the Lords confirmed it, and ordered that the Plaintiff in Error ſhould pay, or cauſe to be paid, to the Defendant in Error, the Sum of Five Pounds for his Coſts in that Houſe.

In Conſequence of this Decree the Inſured was obliged to pay back the full Money to the Inſurer, which was reverſing the firſt Decree given.

Upon the whole we may obſerve that the Rule laid down in our Eſſay §. 8. will, we believe, hold good in every Court of Equity in *England*. It runs thus:

" When a Judge, in diſputed Caſes, finds no apparent Fraud " committed, he cannot well act otherwiſe, than to oblige the " Merchants to adhere to, and fulfill their Contracts, as the beſt " Way of promoting Credit and Trade in general."

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